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Senate. Commerce Committee.
Trading with the Enemy.

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GOVERNMENT DOCUMEN

TRADING WITH THE ENEMY

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE

SIXTY-FIFTH CONGRESS
FIRST SESSION

ON

H. R. 4960

A BILL TO DEFINE, REGULATE, AND PUNISH TRADING WITH THE ENEMY, AND FOR OTHER PURPOSES

JULY 23, 24, 25, 27, 30, AND
AUGUST 2, 1917

Printed for the use of the Committee on Commerce

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TRADING WITH THE ENEMY.

MONDAY, JULY 23, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee met, pursuant to call, at 10.30 o'clock a. m., in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present: Senators Ransdell (chairman), Vardaman, and Fernald.

Also present: Hon. Charles Warren, Assistant Attorney General of the United States; Albert Lee Thurman, Esq., Solicitor, Department of Commerce; Edward T. Quigley, Esq., Assistant Solicitor, Department of Commerce; Mr. B. S. Cutler, Chief of the Bureau of Foreign and Domestic Commerce, Department of Commerce; Francis M. Phelps, Esq., L. Steward Bacon, Esq., and Thomas E. Robertson, Esq., representing the law and rules committee of the American Patent Law Association; J. G. Boston, Esq., of the firm of Cadwallader, Wickersham & Taft; O. G. Saxon, Esq., of the firm of Cravath & Henderson, representing the New York Stock Transfer Association; Mr. K. W. Buck, representing certain shippers of New York City; and Mr. J. S. Edgar, representing the Diarsenol Co., of Toronto, Canada.

The CHAIRMAN. The committee will come to order.

The subcommittee had under consideration the following bill:

H. R. 4900.—AN ACT To define, regulate, and punish trading with the enemy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act shall be known as the "Trading with the
4 enemy Act."
5 SEC. 2. That the word "enemy," as used herein, shall
6 be deemed to mean, for the purposes of such trading and of
7 this Act—
8 (a) Any individual, partnership, or other body of
9 individuals, of any nationality, resident within the territory
10 (including that occupied by the military and naval forces)
11 of any nation with which the United States is at war, or

1 resident outside the United States and doing business within
2 such territory, and any corporation incorporated within such
3 territory of any nation with which the United States is at
4 war or incorporated within any country other than the
5 United States and doing business within such territory:
6 *Provided*, That nothing in this Act shall impair or affect
7 the President's proclamation of April sixth, nineteen hundred
8 and seventeen, or any amendment, modification, or revoca-
9 tion thereof, in relation to the branches of enemy or ally of
10 enemy insurance companies in the United States, when
11 such branches are under the management of citizens of the
12 United States, and such branches, and the managers and
13 trustees thereof, shall be subject to license by the Secretary
14 of Commerce regulating the business thereof and the con-
15 trol and disposition of the funds thereof, subject to rules and
16 regulations prescribed by the Secretary of Commerce, with
17 the approval of the President: *Provided further*, That the
18 definition of "enemy" in this subdivision shall not include
19 any person outside the United States residing outside of the
20 territory of any nation, or ally of any nation, with which the
21 United States is at war, in so far as such person does business
22 with neutrals, allies of the United States, or with the Gov-
23 ernment or people of the United States, and such business
24 is not connected directly or indirectly with any business
25 done by such person within the territory of any nation or

1 ally of any nation with which the United States is at
2 war.
3 (b) The Government of any nation with which the
4 United States is at war, or any political or municipal subdi-
5 vision thereof, or any officer, official, agent, or agency thereof.
6 (c) Such other individuals, or body or class of indi-
7 viduals, as may be citizens or subjects of any nation with
8 which the United States is at war, wherever resident or
9 wherever doing business, as the President, if he shall find
10 the safety of the United States or the successful prosecution
11 of the war shall so require, may, by proclamation, include
12 within the term "enemy."
13 The words "ally of enemy," as used herein, shall be
14 deemed to mean—
15 (a) Any individual, partnership, or other body of individ-
16 uals, of any nationality, resident within the territory (including
17 that occupied by the military and naval forces) of any nation
18 which is an ally of a nation with which the United States
19 is at war, or resident outside the United States and doing
20 business within such territory, any any corporation incorpo-
21 rated within such territory of such ally nation, or incorpo-
22 rated within any country other than the United States and
23 doing business within such territory: *Provided*, That the
24 definition of "ally of enemy" in his subdivision shall not
25 include any person outside the United States residing outside

1 of the territory of any nation or ally of any nation with which
2 the United States is at war, in so far as such person does
3 business with neutrals, allies of the United States, or with
4 the Government or people of the United States, and such
5 business is not connected directly or indirectly with any
6 business done by such person within the territory of any
7 nation or ally of any nation with which the United States
8 is at war.

9 (b) The government of any nation which is an ally of
10 a nation with which the United States is at war, or any
11 political or municipal subdivision of such ally nation, or any
12 officer, official, agent, or agency thereof.

13 (c) Such other individuals, or body or class of indi-
14 viduals, as may be citizens or subjects of any nation which
15 is an ally of a nation with which the United States is at
16 war, wherever resident or wherever doing business, as the
17 President, if he shall find the safety of the United States or
18 the successful prosecution of the war shall so require, may,
19 by proclamation, include within the term "ally of enemy."

20 The word "person," as used herein, shall be deemed to
21 mean an individual, partnership, association, company, or
22 other unincorporated body of individuals, or corporation or
23 body politic.

24 The words "United States," as used herein, shall be
25 deemed to mean all land and water, continental or insular,

1 in any way within the jurisdiction of the United States or
2 occupied by the military or naval forces thereof.

3 The words "the beginning of the war," as used herein,
4 shall be deemed to mean midnight ending the day on which
5 Congress has decleared or shall declare war or the existence
6 of a state of war.

7 The words "end of the war," as used herein, shall be
8 deemed to mean the date of exchange of ratifications of the
9 treaty of peace, unless the President shall, by proclamation,
10 declare a prior date, in which case the date so proclaimed
11 shall be deemed to be the "end of the war" within the
12 meaning of this Act.

13 The words "to trade," as used herein, shall be deemed
14 to mean—

15 (a) Pay, satisfy, compromise, or give security for the
16 payment or satisfaction of any debt or obligation.

17 (b) Draw, accept, pay, present for acceptance or
18 payment, or indorse any negotiable instrument or chose in
19 action.

20 (c) Enter into, carry on, complete, or perform any
21 contract, agreement, or obligation.

22 (d) Buy or sell, trade in, deal with, exchange, transmit,
23 transfer, assign, or otherwise dispose of, or receive any form
24 of property.

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1 the duties of, and fix the salary (not to exceed $5,000 per
2 annum) of an official to be known as the alien property cus-
3 todian, who shall be empowered to receive all money and
4 property in the United States due or belonging to an
5 enemy, or ally of enemy, which may be paid, conveyed,
6 transferred, assigned, or delivered to said custodian under
7 the provisions of this Act; and to hold, administer,
8 and account for the same under the general direction
9 of the Secretary of Commerce and as provided in this
10 Act. The alien property custodian shall give such bond
11 or bonds, and in such form and amount, and with such
12 security as the Secretary of Commerce, with approval
13 of the President, shall prescribe. The Secretary of Com-
14 merce may further employ in the District of Columbia
15 and elsewhere and fix the compensation of such clerks, inves-
16 tigators, accountants, and other employees as he may find
17 necessary for the due administration of the provisions of this
18 Act; and he may in his discretion accept the voluntary
19 services of individuals therefor: *Provided*, That such clerks,
20 investigators, accountants, and other employees shall be
21 appointed from lists of eligibles to be supplied by the Civil
22 Service Commission and in accordance with the civil-service
23 law: *Provided further*, That the Secretary of Commerce
24 shall cause a detailed report to be made to Congress on the
25 first day of January of each year of all proceedings had under

1 this Act during the year preceding. Such report shall
2 contain a list of all persons appointed or employed, with
3 the salary or compensation paid to each, and a statement
4 of the different kinds of property taken into custody and
5 the dispostion made thereof: *Provided*, That no person
6 shall be appointed who is liable to be drafted into the mili-
7 tary service of the United States.

8 SEC. 7. (a) That every corporation incorporated within
9 the United States, and every unincorporated association, or
10 company, or trustee, or trustees within the United States, issu-
11 ing shares or certificates representing beneficial interests,
12 shall, under such rules and regulations as the Secretary of
13 Commerce, with approval of the President, may prescribe and,
14 within sixty days after the passage of this Act, and at such
15 other times thereafter as the Secretary of Commerce may
16 require, transmit to the alien property custodian a full list,
17 duly sworn to, of every officer, director, or stockholder who
18 is an enemy or ally of enemy resident within the territory,
19 or a subject or citizen residing outside of the United States
20 of any nation with which the United States is at war, or
21 resident within the territory, or a subject or citizen residing
22 outside of the United States of any ally of any nation with
23 which the United States is at war, together with the amount
24 of stock or shares owned by each such officer, director, or stock-
25 holder, or in which he has any interest.

1 Any person in the United States holding or having
2 custody or control of any property, beneficial or otherwise,
3 alone or jointly with another or others, for or on behalf of
4 an enemy or ally of enemy, and any person in the United
5 States indebted in any way to an enemy or ally of enemy
6 shall, under such rules and regulations as the Secre-
7 tary of commerce shall prescribe, and within thirty
8 days after the passage of this Act, or within thirty days
9 after such property shall have come within his custody
10 or control, or after such debt shall have become due, report
11 the fact to the alien property custodian by written
12 statement under oath, containing such particulars as said
13 custodian shall require. The Secretary of commerce may
14 extend the time for filing the lists or reports required by this
15 section for an additional period not exceeding ninety days.
16 (b) If any property, money, or other property so held
17 or so owned shall have been, after the beginning of the war,
18 conveyed, transferred, assigned, delivered, or paid to, for
19 the account or benefit of or in trust for an enemy by any person
20 not holding a license under the provisions of this Act, with
21 knowledge or with reasonable cause to believe that
22 such was the nature of the transaction, such assign-
23 ment, conveyance, transfer, delivery, or payment shall
24 be void: *Provided*, That the foregoing provisions
25 of this subsection (h) shall not apply to any pay-

1 ment of money or delivery of property made prior to the
2 passage of this Act in performance or in satisfaction of an
3 obligation or right incurred or created prior to the beginning
4 of the war, where such payment or delivery was made to
5 an agent or trustee appointed prior to the beginning of the
6 war, and who at the time of such payment or delivery had
7 authority to receive the same and there was no reasonable
8 ground to believe that such agent or trustee intended to
9 transmit, or to connive in the transmission of, such money
10 or property to an enemy during the continuance of the war:
11 *Provided further*, That no person shall by virtue of any assign-
12 ment, indorsement, delivery, or transfer of any debt, obliga-
13 tion, or chose in action, made or to be made in his favor by or
14 on behalf of an enemy or ally of enemy, have any rights or
15 remedies against the debtor, obligor, assignor, indorser, or
16 the person delivering the same, unless under license as pro-
17 vided in this Act or was made before the beginning of the war.
18 (c) If the Secretary of Commerce, by direction of the
19 President, shall so require, any money or other property
20 owing or belonging to an enemy or ally of enemy or which
21 the Secretary of Commerce, after investigation, shall de-
22 termine is owing to or belongs to an enemy or ally
23 of enemy, shall be conveyed, transferred, assigned, de-
24 livered, or paid over to the alien property custodian, under
25 such rules and regulations as the Secretary of Commerce

1 shall prescribe. And if not so required, any person, not an
2 enemy, or ally of enemy, who owes to an enemy, or ally of
3 enemy, any money or other property, or to whom any obli-
4 gation or form of liability is presented for payment, may, at
5 his option, pay, convey, transfer, assign, or deliver to the
6 alien property custodian said money or other property so
7 due, with such exceptions and under such rules and regula-
8 tions as the Secretary of Commerce, with approval of the
9 President, shall prescribe.

10 (d) No person shall be held liable in any court for or in
11 respect to anything done or omitted in pursuance of any
12 order, rule, or regulation made by the Secretary of Com-
13 merce under the authority of this Act.

14 Any payment or delivery of money or property to the
15 alien property custodian which this Act authorizes shall be
16 a full acquittance and discharge for all purposes of the obli-
17 gation of the person making such payment or delivery, to
18 the extent of such payment or delivery. The alien property
19 custodian and such other persons as the Secretary of Com-
20 merce may appoint shall have power to execute, acknowledge,
21 and deliver any such instrument or instruments as may
22 be necessary or proper to evidence upon the record or other-
23 wise such acquittance and discharge, and shall deliver up any
24 notes, bonds, or other evidences of indebtedness or obligation
25 respecting, or any security that may have come into the

1 possession of the alien property custodian for, the payment
2 or delivery of the moneys so paid or property so delivered,
3 with like force and effect as if they, respectively, were at-
4 torneys duly appointed by the obligee or owner. The Sec-
5 retary of Commerce shall issue to every person so appointed
6 a certificate of the appointment and authority of such person,
7 and such certificate shall be received in evidence in all United
8 States courts or other courts within the United States.
9 Whenever any such certificate of authority shall be offered
10 to any registrar, clerk, or other recording officer, Federal
11 or otherwise, within the United States, such officer shall
12 record the same in like manner as a power of attorney, and
13 such record or a duly certified copy thereof shall be received
14 in evidence in all courts of the United States or other courts
15 within the United States.

16 SEC. 8. That any person, not an enemy, or ally of
17 enemy, holding a mortgage, pledge, or lien on or other right
18 in the nature of security in, property of an enemy, or ally of
19 enemy, may, after default, dispose of such property, under
20 such rules and regulations and after such notice as the Secre-
21 tary of Commerce, with the approval of the President, shall
22 prescribe; and such notice shall have in all respects
23 the same force and effect as if duly served upon the
24 enemy, or ally of enemy, personally: *Provided*, That no
25 such rule or regulation shall require that notice shall be given

1 in any case in which by law or by the terms of the contract
2 by which such mortgage, pledge, lien, or other right was
3 created, no notice was, prior to the passage of this Act,
4 required; and that in case where by law or the terms of such
5 contract notice is required, no longer period of notice is or
6 shall be required: *And provided further*, That if on any such
7 disposition a surplus shall remain after the satisfaction of such
8 mortgage, pledge, lien, or other right in the nature of se-
9 curity, notice of that fact shall be given to the Secretary of
10 Commerce pursuant to such rules and regulations as he may
11 prescribe, and such surplus shall be held subject to the further
12 order of the Secretary of Commerce.

13 That any contract entered into prior to the beginning
14 of the war between any citizen of the United States or any
15 corporation organized within the United States and an enemy
16 or ally of enemy, the terms of which provide for a termina-
17 tion thereof upon notice from such citizen or corporation,
18 may be terminated by like notice served by such citizen or
19 corporation upon the alien property custodian, and said notice
20 so served shall have in all respects the same force and effect
21 as if duly served upon the enemy or ally of enemy personally,
22 in accordance with the terms of the contract.

23 SEC. 9. That any person, not an enemy, or ally of
24 enemy, claiming any interest, right, or title in any money or
25 other property which may have been conveyed, trans-

1 ferred, assigned, delivered, or paid to the alien property cus-
2 todian hereunder, and held by him or by the Treasurer of
3 the United States, or to whom any debt may be owing from
4 an enemy, or ally of enemy, whose property or any part
5 thereof shall have been conveyed, transferred, assigned, de-
6 livered, or paid to the alien property custodian hereunder,
7 and held by him or by the Treasurer of the United States,
8 may file with the said custodian a statement or notice of his
9 claim under oath and in such form and containing such par-
10 ticulars as the said custodian shall require; and, if said person
11 so filing notice shall, at any time before the expiration of
12 three months after the end of the war, institute a suit in
13 equity in the district court of the United States for the district
14 in which such claimant resides, or, if a corporation, where it
15 has its principal place of business (to which suit the alien
16 property custodian or the Treasurer of the United States, as
17 the case may be, shall be made a party defendant), to establish
18 the interest, right, title, or debt so claimed, then the money
19 or other property of the enemy, or ally of enemy, against
20 whom such interest, right, or title is asserted, or debt claimed,
21 shall be retained in the custody of the alien property custodian
22 or in the Treasury of the United States, as provided in this
23 Act, and until any final judgment or decree which shall be
24 entered in favor of the claimant shall be fully satisfied by
25 payment or conveyance, transfer, or assignment by the de-

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1 fendant or by the alien property custodian or Treasurer of the
2 United States on order of the court, or until final judgment or
3 decree shall be entered against the claimant, or suit otherwise
4 terminted: *Provided*, That if any property belonging to an
5 enemy or ally of the enemy insurance company be delivered
6 to the alien property custodian or deposited in the Treasury
7 of the United States under the provisions of this Act, and any
8 insurance company not an enemy or ally of the enemy, shall
9 claim any right, title, or interest in such property which has
10 been so delivered to the alien property custodian or to the
11 Treasurer of the United States, such insurance company not
12 an enemy or ally of the enemy may institute suit in equity
13 in the District Court of the United States for the District in
14 which the principal office of such company is located, or in
15 the Court of Claims, for the purpose of establishing its right,
16 title, or interest and procuring a decree thereon, and such
17 court may thereupon, on proper showing, direct that the
18 property in the custody of the alien property custodian or in
19 the Treasury of the United States to which such company
20 may show itself to be thus entitled, be delivered to such
21 company and such case may be heard and determined and
22 the property delivered before the end of the war. The alien
23 property custodian or the Treasurer of the United States, as
24 the case may be, shall be made party defendant to such suit.

1 Except as herein provided, the money or other prop-
2 erty conveyed, transferred, assigned, delivered, or paid to
3 the alien property custodian shall not be liable to lien, at-
4 tachment, garnishment, trustee process, or execution, or
5 subject to any order or decree of any court.

6 This section shall not apply, however, to money paid
7 to the alien property custodian under section ten hereof.

8 That if any property belonging to a loyal citizen of the
9 United States who, by virtue of his residence in a foreign
10 country, comes within the definition of the word "enemy"
11 as used in this Act, is delivered to the alien property custodian
12 or deposited in the Treasury of the United States under the
13 provisions of this Act, and the owner thereof afterwards
14 removes to a neutral country or returns to the United States;
15 or if it is ascertained that such owner was not in fact, by
16 virtue of his residence when this Act takes effect, properly
17 included within the definition of the word "enemy" as used
18 herein; or if by inheritance from or by will duly executed by
19 one who comes within the definition of the word "enemy"
20 as used herein, a citizen of the United States residing therein
21 becomes entitled to all or any part of or interest in any property
22 which has been so delivered to the alien property custodian
23 or to the Treasurer of the United States, the Secretary of
24 Commerce may, upon application, by or on behalf of such
25 person and proper showing of the facts, authorize and direct

1 the return to him, in such manner as the Secretary shall
2 determine, of any such property or any part or interest therein
3 to which he may be so entitled. If the Secretary of Com-
4 merce does not grant such application within three months
5 after the same is made, the person so entitled may institute a
6 suit in equity in the district court of the United States for the
7 district in which such person resides or in the Court of Claims
8 for the purpose of establishing his right and procuring a
9 decree thereon, and such court may thereupon, on proper
10 showing, direct that the property in the custody of the alien
11 property custodian or in the Treasury of the United States, to
12 which the claimant may show himself to be thus entitled,
13 be delivered to him, and such case may be heard and deter-
14 mined and the property returned before the end of the war.
15 The alien property custodian or the Treasurer of the
16 United States, as the case may be, shall be made party de-
17 fendant to such suit.

18 SEC. 10. That nothing contained in this Act shall be
19 held to make unlawful any of the following Acts:

20 (a) An enemy, or ally of enemy, may file and prose-
21 cute in the United States an application for letters patent, or
22 for registration of trade-mark, print, label, or copyright,
23 and may pay any fees therefor in accordance with and as
24 required by the provisions of existing law. Any such enemy,
25 or ally of enemy, who is unable during war, or within six

1 months thereafter, on account of conditions arising out of
2 war, to file any such application, or to pay any official fee,
3 or to take any action required by law within the prescribed
4 period, may be granted an extension of nine months beyond
5 the expiration of said period, provided the nation of which
6 the said applicant is a citizen, subject, or corporation shall
7 extend substantially similar privileges to citizens and cor-
8 porations of the United States.

9 (b) Any citizen of the United States, or any corpora-
10 tion organized within the United States, may pay to an
11 enemy or ally of enemy any tax, annuity, or fee which may
12 be required by the laws of such enemy or ally of enemy
13 nation in relation to patents and trade-marks, prints, labels,
14 and copyrights; and any such citizen or corporation may
15 file and prosecute an application for letters patent or for
16 registration of trade-mark, print, label, or copyright in
17 the country of an enemy, or of an ally of enemy after
18 first submitting such application to the Secretary of Com-
19 merce and receiving license so to file and prosecute.

20 (c) Any citizen of the United States or any corpora-
21 tion organized within the United States who desires to manu-
22 facture, or cause to be manufactured, a machine, manu-
23 facture, composition of matter, or design, or to carry on, or
24 caused to be carried on, a process under any patent or
25 copyrighted matter owned or controlled by an enemy or

1 ally of enemy at any time during the existence of a state
2 of war may apply to the Federal Trade Commission for
3 a license; and said commission is hereby authorized to
4 grant such a license, nonexclusive or exclusive as it shall
5 deem best, provided it shall be of the opinion that such grant
6 is for the public welfare, and that the applicant is able and
7 intends in good faith to manufacture, or cause to be manufac-
8 tured, the machine, manufacture, composition of matter, or
9 design, or to carry on, or cause to be carried on, the process
10 or to use the copyrighted matter. The Federal Trade Com-
11 mission may prescribe the conditions of this license and
12 the rules and regulations under which it may be granted
13 and the fee which shall be charged therefor, not exceeding
14 $100, and not exceeding one per centum of the fund depos-
15 ited as hereinafter provided.

16 (16) The licensee shall file with the Federal Trade
17 Commission a full statement of the extent of the use and
18 enjoyment of the license, in such form and at such stated
19 periods (at least annually) as the commission may pre-
20 scribe; and the licensee shall pay at such times as may be
21 required to the alien property custodian (or to such other
22 officer as the President shall direct) not to exceed five per
23 centum of the gross sums received by the licensee from the
24 sale of said inventions or use of the copyrighted matter,
25 or, if such commission shall so order, five per centum of the

1 value of the use of such inventions or copyrighted matter
2 to the licensee as established by the Federal Trade Com-
3 mission; and sums so paid shall be deposited by said alien
4 property custodian (or by such other officer as the President
5 shall direct) forthwith in the Treasury of the United States
6 as a trust fund for the said licensee and for the owner of
7 the said patent or copyright registration as hereinafter
8 provided, to be paid from the Treasury upon order of the
9 court, as provided in subdivision (f) of this section, or upon
10 the direction of the alien property custodian, or such other
11 officer as the President shall direct.

12 (e) Unless surrendered or terminated as provided in
13 this Act, any license granted hereunder shall continue dur-
14 ing the term fixed in the license or in the absence of any
15 such limitation during the term of the patent or copyright
16 registration under which it is granted. Upon violation by
17 the licensee of any of the provisions of this Act, or of the
18 conditions of the license, the Federal Trade Commission
19 may, after due notice and hearing, cancel any license granted
20 by it.

21 (f) The owner of any patent or copyright under which
22 a license is granted hereunder may, after the end of the war
23 and until the expiration of the year thereafter file a bill in
24 equity against the licensee in the district court of the United
25 States for the district in which the said licensee resides, or,

1 if a corporation, in which it has its principal place of business
2 (to which suit the Treasurer of the United States shall be
3 made a party), for recovery from the said licensee for all use
4 end enjoyment of the said patented invention or copyrighted
5 matter: *Provided, however*, That whenever suit is brought,
6 as above, notice shall be filed with the alien property cus-
7 todian (or with such other officer as the President shall
8 direct) within thirty days after date of entry of suit: *Pro-*
9 *vided further*, That the licensee may make any and all de-
10 fenses which would be available were no license granted.
11 The court on due proceedings had may adjudge and decree
12 to the said owner payment of a reasonable royalty. The
13 amount of said judgment and decree, when final, shall be
14 paid on order of the court to the owner of the patent from the
15 fund deposited by the licensee, so far as such deposit will
16 satisfy said judgment and decree; and the said payment shall
17 be in full or partial satisfaction of said judgment and decree,
18 as the fact may appear; and if, after payment of all such
19 judgments and decrees, there shall remain any balance of
20 said deposit, such balance shall be repaid to the licensee on
21 order of the alien property custodian (or such other officer
22 as the President shall direct). If no suit is brought within
23 one year after the end of the war, or no notice is filed as
24 above required, then the licensee shall not be liable to make
25 any further deposits, and all funds deposited by him shall

1 be repaid to him on order of the alien property custodian
2 (or such other officer as the President shall direct). Upon
3 entry of suit and notice filed as above required, or upon
4 repayment of funds as above provided, the liability of the
5 licensee to make further reports to the Federal Trade Com-
6 mission shall cease.

7 If suit is brought as above provided, the court may, at
8 any time, terminate the license, and may, in such event, issue
9 an injunction to restrain the license from infringement
10 thereafter, or the court, in case the licensee, prior to suit, shall
11 have made investment of capital based on possession of the
12 license, may continue the license for such period and upon
13 such terms and with such royalties as it shall find to be just
14 and reasonable.

15 (g) Any enemy, or ally of enemy, may institute
16 and prosecute suits in equity against any person other than
17 a licensee under this Act to enjoin infringements of letters
18 patent and copyrights in the United States owned or con-
19 trolled by said enemy or ally of enemy, in the same manner
20 and to the extent that he would be entitled so to do if the
21 United States was not at war.

22 (h) Except as provided in this section, nothing in
23 this Act shall be construed to authorize the prosecution or
24 maintenance of any suit or action at law or in equity by an
25 enemy or ally of enemy in any court within the United

1 States, prior to the end of the war: *Provided, however,*
2 That an enemy or ally of enemy may defend by counsel any
3 suit in equity or action at law, which may be brought against
4 him. All powers of attorney heretofore or hereafter granted
5 by an enemy or ally of enemy to any person within the United
6 States, in so far as they may be requisite to the performance
7 of acts authorized in subsections (a) and (g) of this section,
8 shall be valid.

9 SEC. 11. That all moneys (including checks and drafts
10 payable on demand) paid to or received by the alien property
11 custodian pursuant to this Act shall be deposited forthwith
12 in the Treasury of the United States, and may be invested
13 and reinvested by the Secretary of the Treasury in United
14 States bonds or United States certificates of indebtedness,
15 under such rules and regulations as the Secretary of the
16 Treasury, with the approval of the President, shall prescribe
17 for such deposit, investment, and sale of securities; and as
18 soon after the end of the war as the Secretary of the Treasury
19 shall deem practicable, such securities shall be sold and the
20 proceeds deposited in the Treasury.

21 All other property of an enemy, or ally of enemy, con-
22 veyed, transferred, assigned, delivered, or paid to the alien
23 property custodian hereunder shall be safely held and adminis-
24 tered by him except as hereinafter provided; and the Secretary
25 of Commerce is authorized to designate as a depositary, or de-

1 positaries, of property of an enemy or ally of enemy (under
2 such rules and regulations as may be approved by the Presi-
3 dent), any such bank, or banks, or trust company, or
4 trust companies, or, in the case of tangible personal property,
5 other suitable depositary or depositaries, located and doing
6 business in the United States as may be recommended by
7 the Secretary of the Treasury. The alien property custodian
8 may deposit with such designated depositary or depositaries,
9 or with the Secretary of the Treasury, any stocks, bonds,
10 notes, time drafts, time bills of exchange, or other securities,
11 or property (except money or checks or drafts payable on de-
12 mand which are required to be deposited with the Secretary
13 of the Treasury) and such depositary or depositaries shall be
14 authorized and empowered to collect any dividends or interest
15 or income that may become due and any maturing obligations
16 held for the account of such custodian. Any moneys col-
17 lected on said account shall be paid and deposited forthwith
18 by said depositary or by the alien property custodian into the
19 Treasury of the United States as hereinbefore provided.

20 The Secretary of Commerce shall require all such desig-
21 nated depositaries to execute and file bonds sufficient in his
22 judgment to protect property on deposit, such bonds to be
23 conditioned as he may direct.

24 The alien property custodian shall have power to sell
25 any tangible personal property transferred, assigned, or de-

1 livered to him hereunder (not including, however, bonds,
2 stocks, or choses in action) which, in his opinion, is likely
3 to be perishable, and he shall deposit the proceeds thereof
4 forthwith in the Treasury of the United States, as herein-
5 before provided.

6 After the end of the war any claim of any enemy or
7 of an ally of enemy to any money or other property
8 received and held by the alien property custodian or de-
9 posited in the United States Treasury, shall be settled
10 as Congress shall direct: *Provided, however*, That on order
11 of the court, as set forth in sections nine and ten thereof,
12 the alien property custodian or the Treasurer of the United
13 States, as the case may be, shall convey, transfer, assign,
14 and pay to the person in whose behalf final judgment or
15 decree shall be entered any property of an enemy or ally of
16 enemy held by said custodian or by said Treasurer, so far
17 as may be necessary to comply with said order of the court:
18 *And provided further*, That the Treasurer of the United
19 States, on order of the alien property custodian (or such
20 other officer as the President shall direct), shall, as pro-
21 vided in section ten hereof, repay to the licensee any funds
22 deposited by said licensee.

23 SEC. 12. That in addition to the facts required by
24 sections forty-one hundred and ninety-seven, forty-one hun-
25 dred and ninety-eight, and forty-two hundred of the Re-

1 vised Statutes, as amended by the Act of June fifteenth,
2 nineteen hundred and seventeen, to be set out in the
3 master's and shipper's manifests before clearance will be
4 issued to vessels bound to foreign ports, the master or per-
5 son in charge of any vessel, before departure of such vessel
6 from port, shall deliver to the collector of customs of the
7 district wherein such vessel is located a statement duly
8 verified by oath that the cargo is not shipped or to be de-
9 livered in violation of law, and the owners, shippers, or
10 consignors of the cargo of such vessels shall in like man-
11 ner deliver to the collector like statement under oath as to
12 the cargo or the parts thereof laden or shipped by them,
13 respectively, which statement shall contain also the names
14 and addresses of the actual consignees of the cargo, or if
15 the shipment is made to a bank or other broker, factor, or
16 agent, the names and addresses of the persons who are the
17 actual consignees on whose account the shipment is made.
18 The master or person in control of the vessel shall, on reach-
19 ing port of destination of any of the cargo, deliver a copy
20 of the manifest and of the said master's, owner's, shipper's,
21 or consignor's statement to the American consular officer
22 of the district in which the cargo is unladen.

23 SEC. 13. That whenever there is reasonable cause to
24 believe that the manifest or the additional statements under
25 oath required by the preceding section are false or that any

1 vessel, domestic or foreign, is about to carry out of the United
2 States any property to or for the account or benefit of an
3 enemy, or ally of enemy, or any property or person whose
4 export, taking out, or transport will be in violation of law, the
5 collector of customs for the district in which such vessel is
6 located is hereby authorized and empowered, subject to re-
7 view by the Secretary of Commerce to refuse clearance to
8 any such vessel, domestic or foreign, for which clearance
9 is required by law, and by formal notice served upon the
10 owners, master, or person or persons in command or charge
11 of any domestic vessel for which clearance is not required
12 by law, to forbid the departure of such vessel from the port,
13 and it shall thereupon be unlawful for such vessel to depart.
14 SEC. 14. That the sum of $250,000 is hereby appro-
15 priated, out of any money in the Treasury of the United
16 States not otherwise appropriated, to be used in the discre-
17 tion of the Secretary of Commerce for the purpose of carry-
18 ing out the provisions of this Act during the fiscal year
19 ending June thirtieth, nineteen hundred and eighteen, and
20 for the payment of salaries of all persons employed under this
21 Act, together with the necessary expenses for transportation,
22 subsistence, rental of quarters in the District of Columbia,
23 books of reference, periodicals, stationery, miscellaneous sup-
24 plies, printing to be done at the Government Printing Office,

1 and all other necessary expenses not included in the fore-
2 going.

3 SEC. 15. That whoever shall willfully violate this Act or
4 the provisions of any license, rule, or regulation issued there-
5 under shall, upon conviction, be fined not more than $10,000,
6 or, if a natural person, imprisoned for not more than ten
7 years, or both, and the officer, director, or agent of any cor-
8 poration who knowingly participates in such violation shall
9 be punished by a like fine, imprisonment, or both, and any
10 property, funds, securities, papers, or other articles or docu-
11 ments, or any vessel, together with her tackle, apparel, fur-
12 niture, and equipment, concerned in such violation shall be
13 forfeited to the United States.

14 SEC. 16. That the district courts of the United States
15 are hereby given jurisdiction to make and enter all such rules
16 as to notice and otherwise, and all such orders and decrees,
17 and to issue such process as may be necessary and proper
18 in the premises to enforce the provisions of this Act, with a
19 right of appeal from the final order or decree of such court as
20 provided in sections one hundred and twenty-eight and two
21 hundred and thirty-eight of the Act of March third, nineteen
22 hundred and eleven, entitled "An Act to codify, revise. and
24 amend the laws relating to the judiciary."

24 SEC. 17. That the several courts of first instance in
25 the Philippine Islands and the district court of the Canal

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1 Zone shall have jurisdiction of offenses under this Act com-
2 mitted within their respective districts, and concurrent
3 jurisdiction with the district courts of the United States
4 of offenses under this Act committed upon the high seas
5 and of conspiracies to commit such offenses as defined by
6 section thirty-seven of the Act entitled "An Act to codify,
7 revise, and amend the penal laws of the United States,"
8 approved March fourth, nineteen hundred and nine, and
9 the provisions of said section for the purpose of this Act
10 are hereby extended to the Philippine Islands and to the
11 Canal Zone.

Passed the House of Representatives July 11, 1917.

Attest: SOUTH TRIMBLE,

Clerk.

(30)

The CHAIRMAN. Mr. Phelps, would you like to be heard first, or shall we hear one of these other gentlemen first?

Mr. PHELPS. Mr. Bacon will make the first statement.

The CHAIRMAN. Will you please give your full name and address, and state what interest you are here to represent, and then state the proposition in your own way?

STATEMENT OF L. S. BACON, ESQ., McGILL BUILDING, WASHINGTON, D. C., CHAIRMAN OF THE LAW AND RULES COMMITTEE OF THE AMERICAN PATENT LAW ASSOCIATION.

Mr. BACON. My name is L. S. Bacon. My address is the McGill Building, Washington, D. C.

I appear before the committee this morning as chairman of the Law and Rules Committee of the American Patent Law Association. That association, may it please the committee, is an association composed of some 350 of the patent lawyers of the United States. It has as its president Mr. Frederick P. Fish, of Boston, who has long been at the head of the patent bar of this country.

We appear before the committee to offer certain suggestions in the form of amendments, which we believe ought to be incorporated in section 10 of the act pertaining to patents, copyrights, and trademarks.

The CHAIRMAN. You are speaking of section 10 of the act as it passed the House?

Mr. BACON. Section 10 of the act as it passed the House; yes, sir.

There are practically only two suggestions which we have to offer that we think are really important, and one of those is an amendment to subsection (a) of section 10. May it please the committee, the section as it stands is to the effect that a foreign enemy, or an enemy or ally of an enemy, is permitted to file an application for patent, trade-mark, or copyright in this country and to prosecute it before the Patent Office. May it please the committee, that is a very essential procedure. It is the duty of the Commissioner of Patents to get these applications passed to patent as soon as possible so as to prevent long delays in the Patent Office. The word "prosecute" means that we have got to meet the objections of the examiners and shape the application so that it will present a proper matter for patent. Nobody in this country that I know of is willing to do that on a contingent fee or for no fee, and this section does not provide for the payment of agency fees, and we suggest that in line 24, after the word "law," there be inserted the words, "and fees for attorneys or agents for filing and prosecuting such applications."

The CHAIRMAN. Let me identify the place where you want that inserted.

Mr. BACON. This copy of the bill may help you. I have here a copy marked in red ink [handing bill to the chairman].

The CHAIRMAN. Yes.

Mr. BACON. I have here a little memorandum, which I will hand in afterwards, which shows the amendments we desire. That will make it so that that section will provide for the American solicitor and the American lawyer getting the fees that the German or the Austrian may have to pay for the prosecution of these cases. It is simply the payment by these foreigners to the American solicitors so that the cases can be prosecuted.

There is one other small suggestion we have to make.

The CHAIRMAN. Do you contend that if those words were not put in there there would be a question about the right of the foreign applicant to pay the fees for the attorneys as well as the fees which the act seems to require for the cost of the patent itself?

Mr. BACON. That is exactly our contention, and we think there is no doubt of its effect; that it would require some special act, because the act now provides only for the payment of the Government fees.

The CHAIRMAN. You wish attorney's fees as well as Government fees?

Mr. BACON. Yes; and of course the more money we can get from abroad the better for us. There is no objection to that clause that I can see.

The CHAIRMAN. I could not imagine any at first blush. I notice you have suggested in lines 3 and 4, page 19, to cancel the word "prescribed" and insert the words "prescribed by law" after the word "period." Do you insist on that now? It is a slight change to make.

Mr. BACON. We would like to insist upon that, and we will refer to that in our memorandum that we hand up. It serves to straighten out and make clear.

The CHAIRMAN. I see that it does not affect the meaning at all.

Mr. BACON. Not at all. The next suggestion is in subsection (b). We suggest that there be an insertion in line 19, after the word

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"prosecute," the final word, of the words "and pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the Secretary of Commerce."

Our observation in connection with that is this, that subsection (b) has to do with the permitting of a citizen of the United States filing an application for a patent in Germany, if you please—we will use Germany as a general term—to pay the fees required by law, but it does not provide for the usual agency fees, which we have to pay in prosecuting our applications for American inventions in Germany. The conditions there are somewhat the same as they are here; only a little different. No American, that I know of, has a right to communicate directly with or prosecute an application before the German Patent Office, and we have to go through the formality of dealing with agents, and, of course, we can not expect those agents to take up this work unless they are paid for their services. Their fees usually are rather nominal, some $25 or $30 or $40 for an ordinary case. That has to be transmitted with the application, and with the Government filing fee, in Germany, and also the taxes.

If we have to pay taxes in Germany we have to pay the agent's fee, some two or three dollars, for taking care of those taxes to keep our patent alive in Germany. This clause provides for the payment of those fees by the American inventor, and in making the suggestion we have also suggested that that is the law with Great Britain, they have provided for the payment of fees by the British subject to the German agents, and Germany likewise provides for the payment of American or British fees by the German subject. We have added to our memorandum a copy of the German law and a copy of the British law on that point.

The CHAIRMAN. Without the addition of those words you think subsection (b) of section 10 would be incomplete?

Mr. BACON. Yes, sir; absolutely.

Senator RANSDELL. It would be impracticable to accomplish the desired end?

Mr. BACON. Yes; and further than that, to make it a certainty that that would not be taken advantage of, the Secretary of Commerce in the first place grants a license to an American inventor to file abroad, and this gives him likewise the right to govern the fees, so that we could not send $10,000, or anything like that—could not send any large amount of money under the guise of a fee. It would have to be, under this provision, a usual and customary fee; it would be all under the control of the Department of Commerce.

Now, taking up the next section—that is, subsection (g), I am going to ask the committee to read that, because it is a very interesting subsection, and we believe it ought to be stricken out entirely.

The CHAIRMAN. We have it before us.

Mr. THURMAN. Under subsection (c) of section 10 you provide for a license to be issued by the Federal Trade Commission.

Mr. BACON. That is for a license to manufacture. Those are different things. This refers to the filing of an application abroad. The Federal Trade Commission is to issue a license here to manufacture under a German patent.

Subsection (g) in effect gives the German a right to enter a suit in any of our Federal courts for the infringement of a patent, which

is perfectly proper, but it goes further and gives him the right to prosecute a suit just as though no war existed between the two countries.

The CHAIRMAN. You mean any person other than a licensee?

Mr. BACON. Yes; other than a licensee. We think that is altogether too broad. We do not have the same privilege in Germany or in Austria or any of those countries, and, further, we do not believe we should give the enemy that right and privilege. He can file his suit so as to maintain his status, so far as any forfeiture under the abandonment clause in six years is concerned, but this section as it stands is in substance to the effect that any court that gets jurisdiction of a suit filed by a German against an American has got to consider that suit, and it has got to be prosecuted under the new equity rules. Our contention is that that matter ought to be left to the court in its discretion. Possibly you know, Mr. Chairman, that now if an enemy's licensee brings a suit against an American citizen we can plead the alien enemy act, and we can have that suit abated. Under this, as it stands there, I think the courts would be compelled to prosecute that suit. I think that should be left to the discretion of the United States court. We have accompanied our suggestion in that particular with a short explanation. If the committee agrees with us that that ought to come out——

The CHAIRMAN. Suppose that is taken out; what right would the owner of a foreign patent have to prosecute his claim against some person other than a licensee who was trying to use the patent in this country?

Mr. BACON. The only right he would have is that of filing his bill in equity.

The CHAIRMAN. Could he even do that?

Mr. BACON. I think he could. There is no reason why he could not file his bill, but he should not be allowed to prosecute the suit.

The CHAIRMAN. This provides for instituting and prosecuting a suit?

Mr. BACON. Yes.

Senator FERNALD. Would the substitution of the word "filing" satisfy you there?

Mr. BACON. We had that up before Gov. Montague, and he came to a different conclusion. Our committee considered that it could not be to the benefit of any American to have this clause in. If the suit is brought now, you can plead your alien enemy act and have it superseded for the period of the war.

Senator RANSDELL. You say it would not benefit any American. You think that further than that it would benefit an enemy?

Mr. BACON. We think so.

The CHAIRMAN. Explain that, will you not?

Mr. BACON. For instance, in this way: Suppose a party undertakes to manufacture under a patent owned by a German, and he does not go to the Federal board and get a license. Now, he has reason for not doing so. He believes that the patent is not good. He conceives that it is not necessary for him to pay 5 per cent of his gross receipts, as provided for in the bill, into the hands of the Treasury, because he doubts the validity of that patent. Now, he goes at it and starts an industry, and the German can come over and sue

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him and prosecute that suit. We think that he ought not to have that right.

The CHAIRMAN. He could probably enjoin him under the patent?

Mr. BACON. He could possibly enjoin the infringement. But, in any event, it would put the American manufacturer to the expense of contesting a suit brought by an alien enemy, and we do not believe that is right. We think it ought to be left entirely to the United States court.

Senator FERNALD. If this was stricken out, it would give no privilege at all?

Mr. BACON. Except that of filing a bill in equity through his American solicitor, without any right to prosecute the suit.

The CHAIRMAN. Under what clause of this bill would he have a right to file that suit, during the continuance of war?

Senator FERNALD. I do not think there is anything in the bill that gives him that right, is there?

Mr. BACON. I do not think there is anything that gives him that particular privilege, at this time.

The CHAIRMAN. I have not observed it, if there is; but are we under any moral obligation to give him that right, as long as we are at war with his country?

Mr. BACON. We have not that right in his country, and I do not see why he should have that right here. My committee has come to the conclusion that it is a whole lot better to let it be as it is now than to give him an affirmative right, taking the discretion of the court entirely out of his case and making it statutory for the court to consider that case just as though there was no war on.

The CHAIRMAN. Does your committee think that the right of the alien enemy to file his application here for a patent and to have his patent rights protected, to have this license issued by the Federal Trade Commission to a person or a number of persons to prosecute that patent and deposit 5 per cent of the gross proceeds—I believe that is the provision?

Mr. BACON. Yes.

The CHAIRMAN (continuing). Do you think that would protect all the just rights which this alien enemy is entitled to?

Mr. BACON. We believe so. May I interrupt you a moment, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BACON. The only proposition is this, that the act as it stands gives the Federal Trade Commission the power to grant an exclusive license or a nonexclusive license; that is, they can grant licenses to anybody or any person or any concern. In that event the question would come up, How is that exclusive licensee going to be protected in his monoply? We have considered that, and we believe that the powers that grant the monopoly have a right to institute suit to protect that monopoly, and we believe it comes under the Federal Trade Commission or the Department of Justice to institute a suit to protect the rights that they have granted under the license.

The CHAIRMAN. Did I understand you to say that the favors granted to our alien enemies under this section (g) are much greater than they are granting to us?

Mr. BACON. We do not know of any right that an American citizen has to prosecute a suit in Germany to-day. Probably Mr. Warren could state about that.

Mr. PHELPS. I think I could answer that question.

Mr. BACON. Mr. Warren possibly could answer that better, for the Department of Justice. We do not know of any right along that line, of ours.

Mr. WARREN. Perhaps I can explain to the committee about that. The bill was drafted primarily by the Commissioner of Patents, and then was gone over by him and myself after hearing the comments of various patent lawyers. I can state to the committee the reasons for this section, after Mr. Bacon has finished.

The CHAIRMAN. We will hear you later, then.

Mr. BACON. As the matter is, we think it would be more equitable to strike out that provision in favor of the patentee than to have it in. So far as my committee is concerned, I know that we do not know of any law directed to that point, giving us the same privilege in Germany.

Mr. PHELPS. In England, you know the English have a trading-with-the-enemy act; and attached to our memorandum, there, is a copy of the English Board of Trade proclamation. There it is [indicating]. There they provide, under that English act, for the granting of licenses of German patents. They do not, however, provide for the prosecution of suits for infringement of German-owned English patents. There have been a number of cases in the English courts, and, so far as I have been able to find, in all the cases in the reports of patent cases—which are reports of all patent proceedings in England—there are none of those cases where the patent was shown to be German owned where they have been allowed to prosecute suit and to get an injunction. As I understand, over there a German files suit and then, on the plea of the defendant, it is abated until the termination of the war. Now, they have been working since December, 1915, under this trading-with-the-enemy bill.

The CHAIRMAN. Would you like to attach that as a part of your evidence?

Mr. PHELPS. Yes; this whole statement here, which was presented by Mr. Bacon, is our explanation of our contention. Now, if there is no provision in Germany for an American to bring suit for the protection of a German-owned American patent, then why should we afford them protection here which is not afforded to our citizens and which England has not found it necessary to afford German subjects who are licensees under German-owned English patents? They have not had any difficulty with these licenses. They have granted a great many licenses over there, and the thing has worked along apparently very well.

The CHAIRMAN. Under what law does the German patentee file suit in England?

Mr. PHELPS. Under the general provision that anybody can bring a suit; but the minute the plaintiff comes in the defendant pleads that the plaintiff is an alien enemy and then the suit is abated until the termination of the war under the general principles of international law, and he preserves all the rights which he has, so that he does not have the statute of limitations run against him.

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The CHAIRMAN. Under the general theory of nonintercourse with an alien enemy, what would be the effect of filing a suit? Are we not prohibited from having any intercourse whatever, and then would the mere filing of a suit give the enemy any rights that he would not have otherwise under the law?

Mr. PHELPS. I think that it would. For instance, under the law you can not recover for an infringment which was committed over six years prior to the filing of the suit; that is, you can not recover damages except for six years immediately preceding the filing of the suit. Now, I think he would protect himself in that period.

The CHAIRMAN. Are not all statutes of limitation suspended by war? That is the general rule.

Mr. PHELPS. That is the general rule; yes; but that is the only possible good I can see that would be brought out of it. We did suggest to Gov. Montague before, the House committee this amendment——

The CHAIRMAN. In lieu of subsection (g)?

Mr. PHELPS. Yes; that after "war"—our amendment was "that such suit shall be held in abeyance during the continuance of the state of war." That was our suggestion there.

Mr. BACON. Here is the bill with the proposed changes marked upon it in red ink.

Mr. PHELPS (continuing). So that the House bill as amended by us would read as follows (reading):

An enemy or ally of an enemy may institute suit in equity against any persons other than an ally under this act to enjoin leases of patents and copyrights in the United States owned or controlled by the enemy or ally of the enemy in the same manner that it would be entitled to do if the United States was not at war: *Provided, however*, That such suit shall be held in abeyance during the continuance of the state of war.

That was our suggestion to the House committee. That suggestion was not, however, adopted. But why a special exception should be made in favor of the enemy under the patent law and not under any other laws of the United States seems rather anomalous to our committee. If they can sue for infringement of a patent, why can they not sue for the infringement of a trade-mark or for unfair competition? Why can they not sue for breach of a contract, or any of these other things?

The CHAIRMAN. I take it that you gentlemen are inspired by the very best and most patriotic motives, because if you wanted litigation, you are doing something here to keep down litigation.

Mr. PHELPS. Yes; we are working against our personal interests.

The CHAIRMAN. Yes; against your personal interests, in a way.

Senator FERNALD. Was this last amendment satisfactory to you, Mr. Phelps?

Mr. PHELPS. Not as satisfactory as cutting it out altogether. I think we ought to cut it out.

Senator FERNALD. But you prefer it to this?

Mr. PHELPS. Yes; I think the committee would prefer it to that. That was our amendment, as a sort of compromise.

Senator FERNALD. That was the suggestion I made, of cutting out this word "prosecute."

Mr. BACON. I would like to have Mr. Robertson, who is vice president of our Patent Bar Association, a solicitor of long standing, who

has had a great deal of experience in connection with foreign matters, make a few remarks in connection with this. At this point I would like to submit to the committee a memorandum upon this subject which I have prepared.

(The memorandum referred to is here printed in full, as follows:)

WASHINGTON, D. C., *July 20, 1917.*

COMMITTEE ON COMMERCE,
United States Senate, Washington, D. C.

GENTLEMEN: In re bill (H. R. 4960) entitled "A bill to define, regulate, and punish trading with the enemy, and for other purposes":

On behalf of the American Patent Law Association, and acting under instructions, we beg to submit to your honorable committee certain amendments to section 10 thereof, which appertains to patents, etc.

PROPOSED AMENDMENT.

Subsection (a), line 24, after "law," insert "and fees for attorneys or agents for filing and prosecuting such applications."

Explanation.—There can be no objection to an enemy or an ally of an enemy paying to United States attorneys or solicitors those charges which are usually exacted for prosecuting and filing applications for patents, trade-marks, etc., and the above amendment is intended to permit that act, or at least to legalize the payment of such fees for such purposes. No application for patent, etc., will be prosecuted by any citizen of the United States without compensation, and such compensation should be paid by the enemy or ally of an enemy.

PROPOSED AMENDMENT.

Subsection (a), page 19, line 3, cancel "prescribed." Line 4, after the period, insert "prescribed by law."

Explanation.—The reason for the foregoing suggested amendment is that there have been a number of different constructions placed upon the provision under discussion as it is now written. One construction is that an alien enemy would have 6 months plus 9 months, or 15 months, after the close of the war to take any action which he would otherwise have to take at any time from the beginning of the war until 6 months thereafter. It is our understanding that it was the intention of the House committee to provide that where action should be taken by an enemy or ally of an enemy during the time of the war or within 6 months thereafter that such enemy or ally of an enemy should have an extension of 9 months in addition to the time prescribed by law within which to take action.

PROPOSED AMENDMENT.

Subsection (b), line 19, after "prosecute" insert: "and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the Secretary of Commerce."

Explanation.—Under this section of the bill as it passed the House citizens of the United States were permitted to pay the Government taxes and fees in connection with patents, etc., but such citizens could not pay to an agent in Germany or to an enemy ally the customary agency fees for filing and prosecuting the applications which subsection (b) permits them to file, and under such conditions no enemy or ally of an enemy agent would undertake to receive or prosecute such applications as are permitted to be filed under the section unless the customary agency fees were paid. These fees are very small as a rule, approximately $25 or $30 in each case, and to safeguard our interests here we suggest that the license which the Secretary of Commerce may issue permitting the filing of applications, etc., shall also permit and control the agency fee. It is just as necessary to pay the agency fee as it is to pay the Government fee. No United States attorney is permitted to file direct with the foreign Government, and therefore in all cases the filing and prosecution of applications are conducted through local foreign agents. We think this suggested addition is very necessary to make effective subsection (b) and should go into the bill as passed.

With relation to fees, Great Britain, under the act of the 7th of December, 1915, a copy of which is attached hereto, authorized the payment of fees. The

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British Government realized that no foreign agent would undertake to file and prosecute applications without the customary agency fees. Under the act of October 13, 1914, a copy of which is also attached, Germany passed a similar act permitting the payment "required for obtaining or the keeping in force of patents, etc." By the agency-fee clause in subsection (b) it will make our law conform with the British and the German laws in that particular. By authorizing the Secretary of Commerce to govern the maximum amount of agency fees when he issues the license to file a patent application in Germany, the country is safeguarded against remitting improper amounts.

PROPOSED AMENDMENT.

Cancel subsection (g).

Explanation.—We recommend the elimination of this subsection (g) in its entirety for the reason that we can see no necessity for such provisions as it contains. In the first place, no enemy or ally of an enemy should be allowed to prosecute any suit against citizens of the United States during a period of the war. If this section is omitted, and the present conditions allowed to continue, then if an enemy or ally of an enemy file a bill of complaint the defendants would have the right to come in and plead that the complainant was an enemy or ally of enemy. This plea would act to suspend and abate the suit during the pendency of the war. If section (g) is allowed to remain in the bill in its present form, it takes that right of suspending an action in patent and copyright cases from the courts. Furthermore, we have been unable to find any law or ruling which permits citizens of the United States to file and prosecute a suit either in Germany or Austria. It does not seem to us fair that this country should accord to German and Austrian citizens greater rights in this country than United States citizens in those countries have.

PROPOSED AMENDMENT.

Page 23, line 22, change (h) to (g).

Explanation.—This change is to letter the subsections consecutively if section (g) is canceled.

PROPOSED AMENDMENT.

Page 24, line 7, change "subsections" to "subsection" and cancel "and (g)."

Explanation.—This change is to accord with the calceling of subsection (g).

Respectfully submitted.

L. S. BACON, *Chairman.*
W. W. DODGE.
FRANCIS M. PHELPS.

GERMANY.

(Decree of Oct. 13, 1914.)

By virtue of the authority vested in me by section 7 of the act of September 30, 1914, it is hereby decreed that until further notice payments required for obtaining or the keeping in force of patents, patterns, or trade-marks are permitted.

GREAT BRITAIN.

(Patents; designs; trade-marks; fees; payments; trading with the enemy. Order (amendatory) of Dec. 7, 1915.)

TRADING WITH THE ENEMY.

Payment of patents, designs, and trade-marks fees.

Whereas by royal proclamation relating to trading with the enemy, dated the 9th day of September, 1914, it was, amongst other things, declared as follows:

"The expression 'enemy country' in this proclamation means the territories of the German Empire and of the dual monarchy of Austria-Hungary, together with all the colonies and dependencies thereof;

"The expression 'enemy' in this proclamation means any person or body of persons, of whatever nationality, resident or carrying on business in the enemy country, but does not include persons of enemy nationality who are neither resident nor carrying on business in the enemy country. In the case of incorporated bodies enemy character attaches only to those incorporated in an enemy country;"

And whereas it was also declared by the said proclamation that from and after the date of the said proclamation the persons therein referred to were prohibited from doing certain acts therein more specifically mentioned;

And whereas it was further declared by the said proclamation as follows:

"Nothing in this proclamation shall be taken to prohibit anything which shall be expressly permitted by our license, or by the license given on our behalf by a secretary of state, or the board of trade, whether such licenses be especially granted to individuals or be announced as applying to classes of persons;"

And whereas by proclamation, dated the 8th day of October, 1914, the said proclamation dated the 9th day of September, 1914, called the trading with the enemy proclamation No. 2, was amended as therein more specifically set forth, and the said proclamation of the 8th day of October, 1914, was to be read as one with the trading with the enemy proclamation No. 2;

And whereas in pursuance of the powers conferred by the above-recited proclamations the board of trade, acting on behalf of His Majesty by license dated the 4th day of November, 1914, granted license to the persons therein referred to to pay the fees therein more specifically mentioned;

And whereas by proclamation dated the 5th day of November, 1914, it was declared that the provisions of the proclamation and Orders in Council then in force issued with reference to the state of war with the Emperor of Germany and the Emperor of Austria, King of Hungary should be extended to the war with Turkey subject to the exception in such proclamation mentioned, and it was declared that the words "enemy country" in any of the proclamations or Orders in Council referred to in article 1 of the said proclamation should include the dominions of His Imperial Majesty, the Sultan of Turkey, other than Egypt, Cyprus, and any territory in the occupation of us or our allies;

And whereas by proclamation dated the 7th of January, 1915, the provisions of the proclamations dated respectively the 9th day of September, 1914, the 8th day of October, 1914, and the 5th day of November, 1914, were extended as therein more specifically set forth;

And whereas by proclamation dated the 16th day of February, 1915, called the trading with the enemy (occupied territory) proclamation, 1915, it was declared that the proclamations for the time being in force relating to trading with the enemy should apply to territory in friendly occupation as they apply to our territory or that of our allies and to territory in hostile occupation as they apply to an enemy country;

And whereas by proclamation dated the 25th day of June, 1915, called the trading with the enemy (China, Siam, Persia, and Morocco) proclamation, 1915, it was declared that the proclamations for the time being in force relating to trading with the enemy should apply to any person or body of persons of enemy nationality resident or carrying on business in China, Siam, Persia, or Morocco in the same manner as they apply to persons or bodies of persons resident or carrying on business in an enemy country, provided that where an enemy has a branch locally situated in China, Siam, Persia, or Morocco nothing in article 6 of the trading with the enemy proclamation No. 2 should be construed so as to prevent transaction by or with that branch being treated as transaction by or with an enemy;

And whereas by proclamation dated the 14th day of September, 1915, it was declared as follows:

"For the purposes of the proclamation for the time being in force relating to trading with the enemy, the expression 'enemy,' notwithstanding anything in the said proclamations, is hereby declared to include and to have included any incorporated company or body of persons (wherever incorporated) carrying on business in an enemy country or in any territory for the time being in hostile occupation";

And whereas by proclamation dated the 16th day of October, 1915, it was declared that the proclamations and Orders in Council then in force issued with reference to the state of war with the German Emperor or with reference to the German Emperor and the Emperor of Austria, King of Hungary, or with reference to the state of war with the German Emperor and the Emperor of Austria,

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King of Hungary, and the Sultan of Turkey should be extended to the war with Bulgaria subject to the exception in such proclamation mentioned, and it was declared that the words "enemy country" in any of the proclamations or Orders in Council referred to in article 1 of such proclamation should include the dominion of the King of Bulgarians, and the words "persons of enemy nationality" in any of the said proclamations and Orders in Council should include subjects of the King of the Bulgarians;

And whereas by proclamation dated the 10th day of November, 1915, it was declared that the proclamations for the time being in force relating to trading with the enemy should as from the 10th day of December, 1915, apply to any person or body of persons of enemy nationality resident or carrying on business in Liberia or Portuguese East Africa in the same manner as they apply to persons resident or carrying on business in an enemy country, provided that where an enemy has a branch locally situated in Liberia or Portuguese East Africa nothing in article 6 of the trading with the enemy proclamation No. 2 should be construed so as to prevent transactions by or with that branch being treated as transactions by or with an enemy;

And whereas it is desirable to restate and extend the provisions contained in the before-recited license dated the 4th day of November, 1914:

Now, therefore, the board of trade, acting on behalf of His Majesty, and in pursuance of the powers reserved in the said proclamations and all other powers thereunto them enabling, do hereby revoke the said license dated the 4th day of November, 1914, and do hereby give and grant license:

(1) To all persons residing, carrying on business, or being in the United Kingdom to pay—

(*a*) On their own behalf or on behalf of any person or persons residing, carrying on business, or being in the United Kingdom; and

(*b*) On behalf of any person or persons residing, carrying on business or being in any part of His Majesty's Dominions outside the United Kingdom who have been authorized to make such payments by the Government of that part of His Majesty's Dominions

any fees necessary for obtaining the grant of or for obtaining the renewal of patents or for obtaining the registration of designs or trade-marks or the renewal of such registration in an enemy country and to pay the enemy agents their charges and expenses in relation to the matters aforesaid.

(2) To all persons residing, carrying on business, or being in the United Kingdom—

(*a*) To pay on behalf of an enemy any fees payable in the United Kingdom on application for or renewal of the grant of patents or on application for the registration of designs or trade-marks or the renewal of such registration and to pay agents in the United Kingdom (including themselves) their charges and expenses, if any, in relation to the matters aforesaid.

(*b*) To pay on behalf of an enemy to any person or persons residing, carrying on business, or being in any part of His Majesty's Dominions outside the United Kingdom—subject to such persons having been authorized by the Government of that part of His Majesty's Dominions in which they reside, carry on business or are to pay on behalf of an enemy any such fees in such part of His Majesty's Dominions—any fees payable on application for or renewal of the grant of patents or on application for the registration of designs or trade-marks or the renewal of such registration in such part of His Majesty's Dominions, and also to pay to such persons their charges and expenses, if any, in relation to the matters aforesaid.

Dated this 7th day of December, 1915.

G. S. BARNES,
Secretary of the Board of Trade.

The CHAIRMAN. We will be glad to hear you, Mr. Robertson.

STATEMENT OF THOMAS E. ROBERTSON, ESQ.

Mr. ROBERTSON. I can only emphasize what has been so well said by the chairman of our committee, that it is the practice of American attorneys in filing applications in all of the foreign countries to send not only the Government fees but the usual agency fees with the Government fees. I think that it will appeal to your committee to fol-

low the court's example. If any one of your committee was a practicing attorney before the Patent Office here, if you received from some German attorney or manufacturer an application already prepared for filing in the Patent Office together with the customary $15 fee, you would be very reluctant to do anything more than file that with the Patent Office, if you would do that much. You certainly would not go ahead and prosecute the case unless you had some prospect of receiving the fees for it; and this suggestion would act simply to make it possible for us to send those necessary agency fees to Germany as well as to receive the necessary agency fees from the correspondents in alien enemy countries. It is a matter of the utmost necessity if we are going to do business in that way.

The CHAIRMAN. May I ask, in passing, if you know of any objections to these matters concerning the fees? Were these matters concerning the fees presented to the House?

Mr. ROBERTSON. Yes.

The CHAIRMAN. And did they leave it out intentionally?

Mr. ROBERTSON. I think it was presented to the House, was it not?

Mr. BACON. The two clauses were presented to the House, but the clause affecting subsection (b) did not contain the provision as to these fees, which we now suggest should be put in the hands of the Secretary of Commerce. That removes any possible objection as to the fees and protects our interests.

The CHAIRMAN. That is the addition to subsection (b)?

Mr. BACON. Yes.

The CHAIRMAN. How about the addition to subsection (g)?

Mr. BACON. That was presented, and I have no idea why they did not consider it.

The CHAIRMAN. That is very obvious.

Mr. BACON. It is perfectly obvious why we should have that out.

Mr. ROBERTSON. I can see no reason for either of those amendments being refused, especially that in regard to the control being given to the Secretary of Commerce with respect to the payment of fees abroad. Certainly there can be no objection to our receiving fees from Germany, and that will not be giving aid and comfort to the enemy. The only way that could happen would be by our sending excessive fees to the Germans; and even if your committee could consider us so unpatriotic as to pay excessive fees, we would be tied hand and foot by that clause, making it entirely under the supervision of the Secretary of Commerce.

The CHAIRMAN. That seems very reasonable. Does any one of you three gentlemen wish to say anything more on that question now? If not, I think it would be logical, then, to hear from Mr. Warren as to those suggested changes in section 10.

STATEMENT OF HON. CHARLES WARREN, ASSISTANT ATTORNEY GENERAL.

Mr. WARREN. These particular changes to subsections 10 (a) and (b) I have never heard of before, but I can see no objection to them. I do not wish the committee, however, to consider that this matter was not considered in drafting the bill. We felt that those payments, like any other payments, of course, would come under the general law giving the Secretary of Commerce power to license; and the only

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reason we put in specific authority to pay taxes, annuities, or fees was because of the claim made by some patent attorneys that the taking out of patents—applying for patents—was not trading with the enemy at all. We wished it distinctly understood that we regarded it as coming within the purview of trading with the enemy. We, therefore, specifically authorized the payment of taxes, annuities, or fees which are required by the laws of the German Empire; and as to all other payments—these payments for counsel fees about which there can be no question of their coming within the purview of trading with the enemy—we left that under the general provision authorizing the Secretary of Commerce to authorize any act which would be unlawful without his license.

The CHAIRMAN. You see no special objection to those changes?

Mr. WARREN. I see no special objection to those amendments.

The CHAIRMAN. How about subsection (g)?

Mr. WARREN. In regard to subsection (g), I think there are other considerations. Of course this whole question of the special favor shown to the subject of patents does produce an entire anomaly in the framing of the law in regard to trading with foreign enemies. The close interconnection of patents in the different countries and the broadmindedness shown on the subject of patents by international action, take that subject and set it aside from all other forms of business, whether logically or illogically. It seems to be agreed that, so far as patents are concerned, modern advanced views regard them in a different light from other forms of business; and in drafting this bill we have tried to put the United States in the vanguard in that respect, as well as in all other respects, during the war.

It is true, I believe—of course the Commissioner of Patents can give you, perhaps, more definite information than I can—that similar rights to this are not granted in Germany nor in England. On the other hand, we have intentionally not made this trading with the enemy bill as strict in many respects as the English act. We have purposely not gone as far as England has gone; so that the mere fact that this provision does not appear in the English act has no particular bearing upon the theory on which this clause was introduced. Now, as I recall—and as I say the Commissioner of Patents primarily is the person who should address you on this subject—this subsection was introduced not for the benefit primarily of alien enemies, but for the benefit of American citizens. The German method of doing business is very largely to grant a contract of license to American citizens, and there are at the present time, of course, many of our own citizens who hold exclusive rights under German-owned patents. Now, the question came, what should be done with those American citizens who shall hold under patents for which no licenses are applied for by other citizens here? Are we to protect them? They have to sue in the name of the owner of the German patent, and therefore we felt that if an American citizen did not apply for a license under this act, and the American citizen who held a license from the German owner was not to be interfered with in any way by the Federal Trade Commission, then he ought to have the right to go ahead and sue in the courts, if there were any infringement of the patent under which he was working; and that was the purpose of this subsection. Incidentally, of course, that goes further, and gives a German patent owner who has not given a license in this country a right to sue.

We made no distinction between those two classes, because we thought upon the whole, taking into consideration the fact that we were protecting the German patent owner in every other way, and were not confiscating his property, and the fact that we were not attempting really to reduce the value of his patent, we felt that he should receive full protection in case a license was not taken out. Thus we felt that primarily (g) was for the protection of the American citizen in case no license was applied for to the Federal Trade Commission, and incidentally it protected any German owner who had not given a license.

The CHAIRMAN. Do you think it would be reasonable to believe there would be some cases where no license would be applied for from the Federal Trade Commission?

Mr. WARREN. Oh, yes. You will see that we do not provide that a license shall be granted in every case. We confine it to patents in regard to which the public welfare may be involved. But, for instance, take a patent to manufacture a toy or some matter in which the public welfare is not concerned, we felt that it was not necessary to provide for licenses in the case of such patents; so that there are many patents in regard to which the Federal Trade Commission, by the bill, would be excluded from granting licenses.

Then there were other cases in which the Federal Trade Commission might see fit not to grant any license at all; and there are other cases where the Federal Trade Commission might see fit to say to the American citizen who now had a license, "You can retain your license, but you shall not have an exclusive license. We will grant licenses to other applicants." So there will be many cases where the Federal Trade Commission does not grant a license and where the American citizen may still have rights under a German-owned patent, which rights he ought to be able to protect by suit. Those suits must be in the name of the patent owner.

The CHAIRMAN. If this is eliminated, as is suggested by the gentlemen, the American citizen and his German principal would not have any chance at all to preserve their rights?

Mr. WARREN. Yes.

The CHAIRMAN. At least, not until after the war, and then a doubtful chance.

Mr. WARREN. In regard to your question as to instituting suit, I suppose that the reason why suits may be instituted is a practical matter, in that until it is brought to the attention of the court in some way that the plaintiff is an enemy, there is no way of having that legally established; so that Mr. Bacon is undoubtedly right in saying that an enemy, while possibly he may not legally, yet he may in fact, institute a suit, and then, on the fact of his enemy character being presented by the defendant in some form of motion to the court, the suit would be suspended.

The CHAIRMAN. Of course my suggestion, however, was that I did not see how an alien would derive any benefit whatsoever from that, so long as we are restricted from having any intercourse whatever with an enemy. If an enemy comes in and does something that is an attempt at intercourse, which he is prohibited to have, and the court steps in and blocks him, I can not conceive what benefit would be derived from such an action on his part. I do not know what the courts might say, but that is my construction of it.

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Mr. WARREN. I think the answer the gentlemen gave in regard to suits is accurate, that the provision that a man may recover damages for an infringement over a certain number of years would be protected by this right to institute a suit.

The CHAIRMAN. But would not that be suspended by the law?

Mr. WARREN. I think that is a little doubtful, because it is not a statute of limitations; it is a measure of damages.

The CHAIRMAN. Yes; but it is a measure he can not assert in the courts, and how can he assert it at all?

Mr. WARREN. I do not know that I have ever read a case on the subject, and I would not want to anticipate what the courts may decide, but I can conceive that there would be a difference between a statute of limitations and a measure of damages.

Senator FERNALD. This would be precisely the same, under section (g) as if the United States were not at war.

Mr. WARREN. Yes; precisely the same as if the United States was not at war. I am not advocating one policy or the other; I am merely explaining that this is the policy under which the bill was drawn.

Senator FERNALD. That was the condition under which it was designed, at least?

Mr. WARREN. Yes.

The CHAIRMAN. Does any one else wish to say anything now?

Mr. BACON. May I make a few remarks in reply to Mr. Warren?

The CHAIRMAN. Yes; Mr. Bacon.

Mr. BACON. And will you pardon me, Mr. Warren?

Mr. WARREN. Certainly, Mr. Bacon. I was merely explaining at the request of the Chairman.

Mr. BACON. Mr. Chairman, I am very glad to hear Judge Warren's suggestion as to the purpose of that subsection (g), to protect American interests that are operating under licenses from German owners, and possibly the section would cover that ground; but we think it goes a little too far. Our thought in discussing this section was that if the United States Government grants a license, it is a licensor, and under the provision of the law that licensor can always institute suit. Now, it is very proper that those suits should be conducted by the licensee in the name, if you please, of the United States—we think that would be proper—and they would probably be conducted in that way, but that does not cover those cases—and there would be a great many of them—where present industry is covered by a license issued by a German owner of a patent. There are many of them. I see there is more difficulty there; but, as I recall the Excelsior Pipe case, 198 United States, I think it was, there they held that where it was impossible to get the original owner of the patent to join them, it was proper for the licensee to enter suit in his own name. We thought it proper to take care of that, so that if an American corporation has a license under a German patent and the United States is at war with Germany, we believe that the courts will recognize the right of the American corporation to bring its suit in its own name. We believe that discretion should be left in the United States court rather than to leave it open for a German to bring and prosecute a suit just as though no war was going on.

The CHAIRMAN. Is there anything further, gentlemen?

Mr. ROBERTSON. I should like, if I may be permitted, to ask a question of Mr. Warren.

The CHAIRMAN. Yes.

Mr. ROBERTSON. That is whether, in the case of a German-owned United States patent, which has previously been owned by a German and has been transferred to an American citizen, the suit could not be brought by the American citizen even after this section has been stricken out.

Mr. WARREN. Yes.

Mr. ROBERTSON. Then we are already taking care of our own citizens who are operating under German inventions, are we not?

Mr. WARREN. Yes.

Mr. ROBERTSON. And therefore all of our citizens who actually own patents invented by Germans are taken care of, as a matter of course?

Mr. WARREN. Yes.

Mr. ROBERTSON. There is only one more phase of it. If a licensee is permitted either with the consent of the German owner or without the consent of the German owner to bring suit for infringement in this country, in our own courts, and is allowed to prosecute that suit, and injunction is issued and an accounting demanded, and large profits have to be turned over as the result of that suit, are not we giving aid and comfort to the enemy to that extent? Now, it seems to me, if you will pardon me for suggesting so bluntly, that your committee should take steps, Mr. Chairman, to prevent any award of damages to such licensee—to an alien enemy. Thank you.

Senator VARDAMAN. Do I understand that the proposition is to eliminate paragraph (g)?

The COMMITTEE. Yes, Senator. That was gone into while you were out of the committee room a while ago.

Senator VARDAMAN. Very well; I will not go into that, then.

The CHAIRMAN. You will find it in the record. Mr. Saxon, would you rather be heard now, or Mr. Boston?

Mr. BOSTON. There are several points I wish to speak of. I will try to be brief on each.

The CHAIRMAN. What section are you starting on?

Mr. BOSTON. I am starting with section 7, subsection (b).

The CHAIRMAN. That is on page 10, I believe.

STATEMENT OF J. G. BOSTON, ESQ., REPRESENTING THE NEW YORK STOCK TRANSFER ASSOCIATION.

Mr. BOSTON. Section 7 (b), as it stands now, purports to nullify payments or deliveries of property made prior to the passage of the act and since the beginning of the war, except that it does not apply—

to any payment of money or delivery of property made prior to the passage of this act in performance or in satisfaction of an obligation or right incurred or created prior to the beginning of the war, where such payment or delivery was made to an agent or trustee appointed prior to the beginning of the war, and who at the time of such payment or delivery had authority to receive the same and there was no reasonable ground to believe that such agent or trustee intended to transmit, or to connive in the transmission of, such money or property to an enemy during the continuance of the war.

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The point that we make with reference to that is that while the payment or delivery of money or property made after the beginning of the war to an agent of an enemy for his benefit is approved, a payment or delivery made of alien's money—enemy money—after the beginning of the war, to or for the benefit of a citizen of the United States remains under condemnation, and it seems to us that the latter case is quite as meritorious as the former.

The case of payment of an alien's money to a citizen is taken care of so far as the prospective operation of this subsection (b) is concerned, because payments which are licensed are excepted. Our sole criticism is that you can not license a thing that has been done, and that therefore, so far as this section is retrospective, still it ought to be expressly provided, after the words "be void," in line 24, page 10, as follows [reading]:

except all such transactions completed since the beginning of the war and prior to the passage of this act as the Secretary of Commerce, with the approval of the President, shall consent to, ratify, or approve. Such license, consent, ratification, or approval may be special to the particular case or by general rule or regulation applicable to classes of cases.

We think that that is a matter which should be covered, because there you are dealing with one of the instruments of commerce. Habitually in the course of business commerce is financed by transfers of credits from one man to another. A New York banking house or a San Francisco banking house, having in its hands funds belonging to a German, receives prior to the war instructions to credit, to pass, so many dollars to the credit of John Smith, a citizen of the United States. More often than not it confirms that credit to John Smith; that is, a confirmed credit on which the New York banker becomes primarily liable to the person to whom he has confirmed the credit. Now, there is not the slightest doubt that since the war broke out there have been hundreds and hundreds of transactions all over the United States in the ordinary course of business where money has been paid for the account of a person who is an enemy, and that situation, it seems to me, should be covered; if, indeed, there be any virtue in the proposition that a payment which was good when made can afterwards be nullified. That is a thing which I am not addressing myself to.

So our first suggestion is that since, in respect to the prospective operation of subdivision (b), the Commissioner of Commerce has power to license payments to be made for or on account of an enemy to a citizen of the United States it should be made clear that where such payments have been made prior to the passage of this act he has power to approve them. But if you confined it to the power to give special licenses he would be swamped. If he has any power, it always ought to be by general regulation.

The CHAIRMAN. If this suggestion of yours is not adopted, what, in your judgment, would be the result?

Mr. BOSTON. Why, gentlemen, I speak with diffidence. The House has passed the bill. I think those payments which were unlawful before this act was passed will remain unlawful and those which were not unlawful can not be touched by it. I say this with diffidence, but at the same time it seems to me that for Congress to say to John Smith, who lawfully paid a debt in April, "Mr. Smith, you have not paid that debt; you owe it"——

The CHAIRMAN. You think it would be an ex post facto act?

Mr. BOSTON. It would work out to deprive him of property in contravention of the fifth amendment.

But now, assuming that the act is operative—I mean that if there is no unconstitutionality about it—it seems to us that if the section as it now is stands, what will happen will be this: That the bank which has, prior to the beginning of the war, at the direction of the Duetscher Bank of Berlin, confirmed to some American house a credit of so many thousand dollars which is not yet paid, can go to the Secretary of Commerce and say, "Please let me pay it," because the Secretary of Commerce has power to license it. Unless you are going to expand the power of the Secretary by implication and give to that word "license" a meaning which I do not think it will bear, if that bank has made that payment, it can not come to the Secretary of Commerce and say, "Please excuse me." He has power to license things to be done, but certainly no express power to ratify and approve like things that have been done.

Senator VARDAMAN. Your idea is that when the Bank of San Francisco, following and pursuant to the direction of the Berlin bank, puts funds to the credit of an American citizen it becomes a transaction between the San Francisco bank and the American citizen?

Mr. BOSTON. It does when it becomes what is called a confirmed credit. Much of it is what is called a confirmed credit; but my point is this, that even where there has been no confirmation of credit——

Senator VARDAMAN. What do you mean by a confirmation of credit?

Mr. BOSTON. The bank will receive instructions from its foreign correspondent saying, "Please confirm to A. B. & Co. a credit of so many thousand dollars." Then they will notify A. B. & Co. "You have a confirmed credit of so many thousand dollars," and that is a promise on the part of the bank that it will pay; and my point is that even in cases where there has been no confirmation there have been since the beginning of the war, undoubtedly, cases where banks and business houses—anybody who had foreign dealings—have in the ordinary course of business made payments to citizens of the United States out of funds belonging to Germans, pursuant to instructions received prior to the beginning of the war; and I think that almost any counsel who has read the decisions of the Supreme Court of the United States on the point would have advised that before the passage of this act those payments were lawful, and all that we suggest is, we do not ask that you approve the practice, but merely that, there being that broad field to cover, since the House has given the Secretary of Commerce the power to license things to be done, it certainly ought also to give him the power to approve things of the same sort that have been done.

The CHAIRMAN. Is it your contention that after the declaration of war, transactions such as are described here in subsection (b) were perfectly lawful and there was nothing against them in law or in morals?

Mr. BOSTON. It includes many things that were lawful. You will find that proviso beginning on line 24, page 10, and I think you will find that that is exactly the law as it has been laid down, first by Mr.

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Justice Washington in Conn *v.* Penn, away back in the early eighteen hundreds, and several times since in the Supreme Court of the United States. As the Supreme Court of the United States has said, the crime consists in the exportation of money or property; that it is perfectly lawful so far as any question of public policy or fealty or allegiance is concerned for a citizen of the United States to make a delivery of money or property within the United States to an enemy in the United States or to an agent in the United States of an enemy. That was held in the case of Ward *v.* Smith.

The CHAIRMAN. Even with the knowledge that that money was to be paid over to the alien enemy.

Mr. BOSTON. It must not be paid, the court has said, with any view to the transmission of the money or property to the enemy in his country; but the court has said that if it be done without that view, the mere fact that that agent may do it does not take the act—I do not like to take up the time of the committee, but in the case of Conn *v.* Penn——

The CHAIRMAN. We would like to hear you fully. It is a very interesting point.

Mr. BOSTON. Yes. In the case of Conn *v.* Penn (Fed. Cas., 3104) the suit was over some obligations that were owing by some residents of Pennsylvania to the proprietors of Pennsylvania. They were obligations arising in the old, pre-Revolutionary days. The question was whether, during the Revolutionary War, and afterwards during the war of 1812, the running of interest on those obligations was suspended, raising the primary question whether it was lawful during those wars to make payment. Mr. Justice Washington said that the question was novel, and he said that the crime was in the exportation of money or property into the enemy country; that a payment in our own country to a person here who was within the control of our own Government was perfectly valid and lawful, unless it was made with the knowledge that the person to whom the money was paid or delivered intended to transmit it. There the question was whether payment could not have been made during the war of the Revolution, and again in 1812, to agents who were in this country, agents of the English proprietors, and the court sent it back because the evidence was unsatisfactory whether there was an authorized agent or not.

The CHAIRMAN. Would the law as stated by you in that case have been that the fact would have to be settled in each individual transaction?

Mr. BOSTON. Pardon me, I do not think I caught your question.

The CHAIRMAN. I say, would not the law, if it be correct as stated in the case cited by you, indicate a principle applicable to the facts which would have to be ascertained in each case as it arises?

Mr. BOSTON. I have not any doubt that that is so, and that is why we have not come before you asking you to give a clean bill of health to certain transactions. We have simply asked you to lodge with the Department of Commerce the power of inquiring, as the House has lodged with it the power to inquire, into the facts of a future transaction, and license it. We suggest that they ought, by the same reasoning, to have power to inquire into a consummated transaction, and approve it. That is really the whole meat of that amendment.

The CHAIRMAN. Are you through with that part?

Mr. BOSTON. I was merely going on with some of the later cases on that subject of payment to enemies.

The CHAIRMAN. Go right ahead. I do not want to interrupt you.

Mr. BOSTON. In the case of Ward *v.* Smith (7 Wall., 447) there was a case where two bonds were made payable at a bank in Alexandria, prior to the outbreak of the Civil War. The bondholder on the outbreak of the war left Alexandria and went within the Confederate lines, and remained within them during the war, so that he acquired the status of a belligerent. One of the bonds he left at the bank. The other he took with him. This suit arose after the war, and again it was the old question whether interest ran during the war. The Supreme Court held that as to that bond which he took with him into the Confederate lines the Alexandria bank had no agency to accept payment, and therefore there was no possibility of payment during the war, and interest was suspended. As to that bond which he left with the bank in Alexandria, the court held that there was an agency on the part of the bank to collect. It then affirmed Justice Washington's statement of the law; said that there was no wrong in paying money during the war to an agent of a belligerent enemy within your own jurisdiction, with the proviso that there was no contemplation of its transmission across the line.

In the case of Buchanan *v.* Curry (19 Johns [New York], 141) there was a case where a man prior to the beginning of the War of 1812 had contracted to deliver certain timber to a Canadian resident in Canada. There the timber was delivered in the United States during the War of 1812 to an agent here of the Canadian, who was a British subject; and again it was upheld by the New York court, again citing Justice Washington.

In the case of Insurance Co. *v.* Davis (95 U. S., 425) the New York Life Insurance Co. had an agent in Petersburg prior to the beginning of the war. During the war a tender was made to that agent of premiums on a policy of life insurance. This was a suit after the war on the policy, and the question was whether it had lapsed for failure to pay premiums, and that brought up the question whether the tender to this agent was a valid tender. The court held that it was not, because it was one of the terms of the policy that no payment—renewal premium—was good unless evidenced by a receipt signed by certain officers of the company. When the insured tendered his payment to the agent down there one of the reasons that the agent gave for refusing to accept it was that he did not have the proper receipts, and the court held that he had no power as agent actually from his principal. The decision went upon the question whether in the particular case the agency established before the war could be deemed to continue as by the intent of the parties, not as a matter of law, but by the intent of the parties, but the court reiterated as a general proposition the proposition that was laid down by Justice Washington.

Then, in the case of Fritz *v.* Stover (22 Wall., 198), there was a case where the same thing was admitted to be the law, but the Supreme Court held that where a man had been constituted an agent before the war to collect a debt he was not justified after the war broke out in accepting payment of it in Confederate money at a depreciated value, holding that an agency to collect and transmit ceases

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as soon as principal and agent cease to be able to communicate with each other.

I think, gentlemen, that those are about all the decisions that are really in point. It seems to me to follow, while the case has never come before the court whether you can pay an enemy's money here to a citizen here, that if you can pay an enemy's money to his agent here you can violate no possible principle of law by using enemy's money here to make payments here under arrangements made before the war, and without any connection with the war, but simply in the transaction of business which, so far as the enemy is concerned, has ceased to operate.

The CHAIRMAN. What do you say about the operation of the agency after the beginning of the war? Does not the beginning of war ordinarily dissolve an agency?

Mr. BOSTON. That is covered in this amendment, because it makes the express proviso that the agency be at the time and continue as one—that is, that the agent be at the time authorized: that is, it depends on the circumstances of the particular case.

The CHAIRMAN. Have not our courts held that an agency was dissolved by the commencement of war?

Mr. BOSTON. In the case of Ward *v.* Smith they held specifically that that sort of an agency continued. I think you will find that the rule is about this, that where the agency is such an agency as might in the ordinary course of events call for further instructions from the principal, and there is created a situation where the agent might naturally want to consult his principal, then out of justice to the parties the intervention of the war suspends the agency: that it would be unjust to saddle a man, who can not communicate with his agent and change his instructions, with an agency that he never created with any such contingency in view: and, on the other hand, doubtless there may be many cases where you can surmise—not surmise, but know—that the agency was intended for some specific act or other, to continue without any further contingencies: it is a completed, closed instruction. It seems to me that the distinction would lie between those two classes of cases, and, of course, each case would depend on its own facts.

There are two amendments there to the same effect, in line 17, page 11, section 7(b). Both are intended to fill what seems to us to be a gap left by the expression there as it stands. It gives to the Secretary of Commerce the power to approve on investigation as well as to license.

I wish to place in the record a memorandum in the nature of some proposed amendments suggested by the New York Stock Transfer Association.

(The memorandum referred to is here printed in full, as follows:)

RE TRADING-WITH-THE-ENEMY BILL (H. R. 4960).

(Memorandum submitted on behalf of the New York Stock Transfer Association in support of certain proposed amendments.)

The undersigned committee, appointed by the New York Stock Transfer Association to consider any proposed legislation in regard to trading with the enemy, appeared before the House Committee on Interstate and Foreign Commerce on May 31, 1917, in support of certain amendments, proposed by the undersigned committee, to the trading-with-the-enemy bill that had been re-

ferred to the House committee. Many of such proposed amendments have been adopted by the House and are embodied in the bill as it has been referred to this committee; the others were rejected.

Among the amendments suggested by us and so rejected by the House were certain provisions intended to modify the rigor of the retroactive operation of subdivision (*b*) of section 7. The Assistant Attorney General, Mr. Warren, has suggested that the better way to meet the objections to that subdivision is to eliminate its retroactive feature and insert in lieu thereof a provision which will prevent the possibility that this act shall operate to ratify or condone by implication any past unlawful transaction, thus leaving the validity of things already done unaffected one way or the other by this act, and to depend on the law, as the courts shall determine it was, when the things were done.

He has accordingly drafted a substitute for subdivision 7 (*b*). It seems to us that his suggestion is sound and that his substitute should be approved by the committee. We therefore adopt as one of the amendments which we advocate Mr. Warren's substitute for subdivision (*b*) of section 7, and ask that it be approved instead of the amendments of that subsection heretofore proposed by us as our first amendment.

Some of the rest of our rejected amendments we have modified in particulars stated below to meet objections pointed out in the House and as so modified we think they should be adopted. The rest of our rejected amendments we think should be adopted as originally proposed. It is the purpose of this memorandum to put before the Senate committee the amendments which we think should be made in the bill as it has passed the House, and our reasons for that judgment.

FIRST AMENDMENT.

The amendments to subdivision (*b*) of section 7 as originally proposed by us to the Senate committee were as follows:

Page 10, line 24, section 7 (*b*), after the words "be void," add: "except all such transactions completed since the beginning of the war and prior to the passage of this act as the Secretary of Commerce, with the approval of the President, shall consent to ratify, or approve. Such license, consent, ratification, or approval may be special to the particular case or by general rule or regulation applicable to classes of cases."

Page 11, line 17, section 7 (*b*), after the words, "beginning of the war," change period to semicolon, and add: "or shall be assented to, ratified, or approved by the Secretary of Commerce, with the approval of the President. Such license, assent, ratification, or approval may be special to the particular case or by general rule or regulation applicable to classes of cases."

We ask, however, that, in lieu thereof, Mr. Warren's amendmeent be accepted, It is as follows:

Strike out the whole of subdivision 7 (*b*), being line 16 on page 10 to line 17 on page 11, both inclusive, and substitute therefor the following:

"Nothing in this act contained shall render valid or be construed to recognize as valid any act or transaction constituting trade to, with, or for, or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this act which would otherwise have been void or invalid at law.

"Any assignment, indorsement, conveyance, transfer, delivery, or payment of money or other property, or other act in violation of section three hereof, made or performed after the passage of this act, by any person, to, or with, or for, or on account of, or on behalf of, or for the benefit of an enemy or ally of an enemy, and not under license as provided in this act, shall be void; and no person shall by virtue of any assignment, indorsement, conveyance, transfer, or delivery of any debt, contract, obligation, or chose in action made after the beginning of the war in his favor, by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy, have any right or remedy against the debtor, contractor, obligor, or person liable to pay, fulfill, or perform the debt, contract, obligation, or chose in action, except in case said assignment, indorsement, conveyance, transfer, or delivery shall be made under license as provided in this act: *Provided*, That nothing in this act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy has devolved by assignment or other-

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wise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder."

The last paragraph of Mr. Warren's amendment, beginning with the words "*Provided*, That nothing in this act contained shall prevent the carrying out," is our fourth amendment and is advocated by us, but the reasons for such advocacy will be given later.

The reasons on which we base our advocacy of the rest of Mr. Warren's amendment are as follows:

That subsection 7 (*b*) as passed by the House is condemnatory of many transactions which any lawyer, guiding himself by the decisions of the Supreme Court of the United States, would probably have advised an inquiring client were not unlawful; and in many cases if not unlawful were obligatory; and that the subject matter to which said subsection reaches involves a very large and important class of transactions.

In Conn *v.* Penn. (Fed. Cas., 3104), the question was whether interest ran during the Revolution and the War of 1812 on certain indebtedness to proprietors of Pennsylvania who were British subjects resident in Great Britain. It was urged that the running of interest was suspended because the proprietors of Pennsylvania had agents in the United States to whom payment of the principal could at any time have been made. Judge Washington said that the rule as to the abatement of interest "can never apply in cases where the creditor, although a subject of the enemy, remains in the country of the debtor, or has a known agent there authorized to receive the debt, because the payment to such creditor or his agent could in no respect be construed into a violation of the duties imposed by the state of war upon the debtor. * * * It is no objection that the agent may possibly remit the money to his principal. If he should do so, the offense is imputable to him and not to the person paying him the money."

In Buchanan *v.* Curry (19 Johns. (N. Y.), 141), timber was delivered in the United States to the agent of a Canadian subject of Great Britain after the outbreak of the War of 1812, but pursuant to a contract made before that war. It was held that it was not unlawful voluntarily to pay debts or perform contracts if the payment be made or duty performed in our own country; that the crime consists in exporting the money or property or placing it in the power of the enemy, not delivering it to an alien enemy residing here under the control of our Government.

In Ward *v.* Smith (7 Wall., 447) two bonds payable by their terms at a bank in Alexandria, Va., were made prior to the outbreak of the Civil War. After the outbreak of the Civil War the owner of the bonds moved within the Confederate lines and remained there during the period of the war. One of the bonds he took with him; the other he left at the bank. This action was brought after the termination of the war on said bonds and the question was whether the running of interest was suspended during the war. It was held that as to the bond which was taken away from the bank the bank had no agency to collect. Therefore no payment of the principal could have been made during the war and interest did not run on that bond. But it was held that as to the other bond the bank was agent to collect; the principal could have been paid at any time, and therefore interest did run.

In holding that payment to the agent of the enemy during the war would have been lawful the Supreme Court cited with approval the decision in Buchanan *v.* Curry and Judge Washington's language and decision in Conn. *v.* Penn.

In Insurance Company *v.* Davis (95 U. S., 425) payment of a premium on insurance policy issued by the New York Life Insurance Co. had been tendered during the war in Petersburg to a person in that place who, prior to the war, had been the insurance company's agent in that city, and the question was whether that was a valid tender. It was held on the particular facts of that case that the agent was not authorized to receive payment and that for this reason the tender was not good, but the court in its opinion said that one of the exceptions to the rule of suspension of commercial intercourse "is that of allowing the payment of debts to the agent of an alien enemy when such agent resides in the same State with the debtor. * * * But that this can not be done with a view to transmitting the funds to the principal during the continuance of the war, though if so transmitted without the debtor's connivance he will not be responsible for it."

Again Conn *v.* Penn, and Buchanan *v.* Curry were cited with approval.

In Fritz *v.* Stover (22 Wall., 198) shortly before the outbreak of the Civil War a resident of Pennsylvania went down into Virginia to settle a controversy. As part of this settlement a bond for the payment of a certain sum of money was given to the Pennsylvanian. He thereupon returned to Pennsylvania, leaving the bond in the possession of the attorney in Virginia who had acted for him in the settlement. The bond matured during the war. The attorney collected it, accepting in payment Confederate notes. After the termination of the war this action was brought by the Pennsylvanian against the obligor on the bond, and the question was whether the payment made to the Virginia attorney during the war was valid payment. The court held that probably an agency to collect was created by leaving the bond with the attorney, but that in the first place it was not within the contemplation of the parties that payment should be accepted in a depreciated currency, and, in the second place, that, as a matter of private justice to the principal, such an agency ought not to be deemed to continue in existence after the outbreak of war had made it impossible for the principal to communicate with his agent, or for the agent to remit if he collected.

The above-mentioned cases decided by the Supreme Court of the United States are the leading and about all the cases decided by that court which deal with the subject of payments of money or deliveries of property wholly made within one country during war. We think that on the authority of the above cases any lawyer would have advised his client that where, before the war, an agent was appointed here with such powers and under instructions of such nature that the suspension of communication does not, as a matter of private right and justice, infer suspension of the agency, payments of money or deliveries of property might lawfully be made to such agent. While no such payment or delivery to an agent is obligatory, in the sense that it can be enforced by action during the war, still it is in many cases obligatory in the sense that, if it be not made, interest will run or other penalty accrue during the war and be collectible at its close. So, though the continuance of the agent's authority in many cases might be doubtful, the debtor or custodian of property would feel it safer to make the payment or delivery in reliance on ratification by the principal after the war than to incur the risk of penalty by deciding for himself the question of law as to the suspension or continuance of the agent's authority.

As subdivision (*b*) was originally drafted and reported to the House of Representatives it purported to nullify all payments of money or deliveries of property to agents of enemies made since the beginning of the war. An amendment proposed by us to avoid this injustice was adopted by the House and is now in the bill (p. 10, line 24, and p. 11, lines 1 to 10, inclusive). This will be unnecessary if Mr. Warren's amendment should be adopted.

There is also the question of payments of money or deliveries of property made by an agent or other person for or on account of an enemy or ally of enemy to a citizen or other person not an enemy or ally of enemy.

Here we touch one of the principal instruments of commerce. In the ordinary course of business a large part of the commercial transactions within the country, and all but a small percentage of international transactions are financed by transfers of credits—that is to say, by applying moneys due to one person toward the payment of obligations incurred by another. Thus, if a commercial house be indebted to A, a resident of Germany, and A be indebted to B, a citizen of the United States, A will direct the commercial house to pay for his account so many dollars to B. Generally this direction takes the shape of a draft drawn by A on the debtor commercial house payable to the order of B. It frequently, however, takes the shape of a simple letter or cable of instructions from A to pay B and charge the payment against A's account. If the draft be made payable so many days or months after sight it will be presented to the commercial house on which it is drawn and will be accepted by it. It then, while it still remains a transaction for the account of the German, becomes an obligation of the accepting house. Frequently, where the transfer of credit is by letter or cable, it is accompanied by a request or instruction to "confirm the credit." The commercial house will then notify B that he has a firm credit of so many dollars. This means that the credit is not subject to revocation and is equivalent to a binding promise of the commercial house that it will pay to B.

While transfers of credits directly from A to B are very frequent, the vast majority of transfers of credits are indirect.

Thus if A, the German, sells goods in the United States but does not buy here he must either require his American debtors to remit to him in gold or drafts

or sell his claims against the American house on his own or some other European market. Frequently the latter transaction is the most advantageous. He will in that case draw his draft on the American house for the amount of its debt to him and will sell that draft. Generally this sale is not made directly to some person having occasion to make payments in America but is made to some bank or bankers making a business of buying and selling foreign exchange. The Senate committee knows that the business of buying and selling foreign exchange is an enormous one, and that it is absolutely essential to the smooth flow of international commercial transactions, and this whole enormous business is nothing but an elaborate, and often very complicated, series of transactions by which in the last analysis money owing by a commercial house to a foreigner is paid for his account to an American.

It is of course essential that these avenues of realizing on his assets should be closed during the war to an enemy, but it must be remembered that when war was declared in a number of cases, which was certainly very large but which of course can not be accurately estimated, the transfer of credit out of Germany had been accomplished, and obligations to other persons than the German had been incurred by American citizens, and rights in the credit had accrued either to subjects of foreign friendly powers or to our citizens, but the actual payment by the American debtor had not been made.

From the proposition which seems to have been established by our courts as set forth above, that it is not unlawful to make payment to an agent here of an enemy, it would seem to follow as a necessary logical corrollary that it is not unlawful for a person here, either as agent for or debtor to an enemy, to make payment here to a citizen of the United States; we have no doubt that any lawyer, being consulted, would have so advised; and, it must be that in very many cases pursuant to transactions had in the ordinary course of business prior to the war, payments have been made here to citizens of the United States for account of an enemy since the war began.

We proposed to the House of Representatives an amendment to except such cases from the retroactive operation of subdivision (*b*) of Section 7, but it was rejected and as said subdivision now stands it purports to nullify all of such transactions heretofore had.

We have thought that it may have been rejected because the House felt that under its cover some objectionable transactions might be condoned. We do not see how this could be, but in coming before the Senate we substituted for the amendment proposed to the House an amendment which should leave it in the power of the Secretary of Commerce to ratify and approve such transactions as general experience and general investigation might indicate can safely be done.

This was our original first amendment proposed to the Senate and will be rendered unnecessary if Mr. Warren's substitute for subdivision 7 (*b*) be accepted.

At this point we are discussing simply the injustice of any attempt to nullify payments of money and deliveries of property made prior to the passage of the act, doubtless in the aggregate involving very large amounts, which we think most lawyers would have advised their clients were innocent, and, in many cases, if innocent, obligatory. We will below, in connection with our seventh amendment, urge the advisability of permitting certain payments of money and deliveries of property to be made after the passage of the act.

Under our amendments as originally proposed or Mr. Warren's substitute, nothing will be taken out of the operation of this act except cases where all benefit which could possibly accrue to the German, except release of his obligation to a citizen of the United States, did accrue prior to the outbreak of the war.

It may be said that to attempt to revive as an obligation to an enemy a debt which was lawfully discharged by a transaction valid under the law then in force and to compel such citizen to pay over to the alien property custodian the amount of such debt or obligation would so obviously deprive that citizen of property within the meaning of the fifth amendment to the Constitution that it is out of the power of Congress, and that therefore subdivision 7 (*b*) as it now stands can have no effect upon a past transaction which was lawful. The truth is that the act as it stands purports to do that very thing; that it does not lie with the Secretary of Commerce to declare acts of Congress void; and that if it be allowed to stand it will be the duty of the department to try to enforce it, and citizens of the United States may thus be subject to litigation to sustain their plain constitutional rights.

SECOND AMENDMENT.

On page 9, line 18, section 7 (*a*), after the word "is," add the following: "known to be or who such corporation, association, company, or trustee may have reasonable cause to believe is."

Also on same page and section, line 25, after the word "interest," add the following: "*Provided, however*, That the name of any such officer, director, or stockholder shall be stricken, permanently or temporarily, from such list by the alien property custodian where he shall be satisfied by such officer, director, or stockholder that he is not an enemy or ally of enemy resident within the territory or subject or citizen residing outside of the United States, or of any nation with which the United States is at war, or resident within the territory or a subject or citizen residing outside of the United States of an ally of any nation with which the United States is at war."

The second and third amendments are cognate and will be discussed together.

THIRD AMENDMENT.

On page 10, line 3, section 7 (*a*), after the words "for or on behalf of," add: ", or which such person may have reasonable cause to believe is the property of"; and, line 5, after the words "ally of enemy," add: "or to any person who he may have reasonable cause to believe is an enemy or ally of enemy"; and, line 13, after the words "shall require," change period to comma and add: "provided that the name of any person shall be stricken from the said report by the alien property custodian, either temporarily or permanently, when he shall be satisfied by such person that such person is not an enemy or ally of enemy."

Section 7 (*a*), page 9, lines 8 to 24, provides that every corporation incorporated within the United States, and every trustee or unincorporated association issuing shares or certificates representing beneficial interest shall transmit within 60 days after the passage of this act to the alien property custodian a complete list, duly sworn to, of every officer, director, or stockholder who is an enemy or ally of enemy residing in the territory of any enemy or ally of enemy country, or a spubject or citizen residing outside of the United States, of a country or ally of a country with which the United States is at war, which list must state the amount of shares or stock owned by such officer, direcor, or shareholder, or in which he has any interest, and that any person having money or property owing or belonging to an enemy or ally of enemy shall make similar report. It is clear that this subdivision as it now stands has no application to any other case except where the officer, director, or stockholder of a corporation, or the person to whom money is owed, or for whom property is held is an enemy or ally of enemy. The person required to make a specified report is thus left in a position where he can not, either with safety or conscientiously, include in the report any stock or other property except such as he can swear belongs to an enemy or ally of enemy.

This requirement seems to be predicated on the idea in some quarters that all that a corporation has to do to ascertain which, if any, of its stockholders are foreigners, is to go to its own books; this is far from being a fact.

It is true that practically every corporation has on its books a name of a person as shareholder for every share of its outstanding stock, and an address for that person. But as a rule in cases of foreign investment the person whose name so appears and whose address is so given is not the foreign investor.

Where stocks are bought on the American market for foreign investment, it is the practice almost without exception to transfer the stock on the corporation's books into the name of some American banking or brokerage house, or some employee of such house, and this is the name and address which appears on the books. Occasionally a dividend order will be lodged with the corporation by the record holder to pay dividends to or for the account of some foreign banking house, but in a very large number of cases, probably the majority of foreign investments, the real owner looks entirely to the American house in whose name or whose employee's name the stock stands, and the corporation will have no absolute knowledge, and frequently not even an indication of the real ownership or the ultimate destination of dividends. Its officers may in some cases surmise from the known affiliations of the record stockholders or his employer that the stock may represent foreign investment, but unless the registered stockholder shall choose to disclose the real ownership it will even in those cases be helpless. No conscientious man, however patriotic, should be asked to swear that certain stock is foreign held, when all that he knows or can find

out about it is that it stands in the name of a firm or employee of a firm which has the reputation of having foreign dealings.

Again, an even more troublesome case is that where the address of the stockholder is not given, but an American address is given, to which all notices and payments are to be sent; i. e., William Schmidt, c/o Brown Bros., New York City. Cases of this nature are very frequent and will inevitably cause a great deal of trouble to both the Government and the corporations. The corporation's officers may have good reason to believe that the stockholder is an enemy resident outside the United States, and yet its knowledge is simply conjectural. Moreover, the corporation having such suspicions, will be unable to obtain definite information from the American addressee, who is under no obligation to give it, and will be strongly opposed to so doing.

Moreover, it may well be doubted that this subsection 7 (*a*), as it now stands, purports to cast upon the corporation a duty or clothe it with a right to include in its report any stock standing on its books in the name of an American or resident of America. All that it is required to report is its "stockholder," that is, the registered holder, and not the beneficial owner.

It seems to us that, if the Government is to have in this act an efficient instrument for reaching enemy moneys invested here, the Congress must take cognizance of the above-mentioned facts, and must also take into consideration ordinary principles of human conduct. We can know to a certainty that, if the act is allowed to stand as it now is, there will be many cases where a corporate officer will not include in his report stockholdings which he may nevertheless have more or less reason to suspect represent foreign investments.

We believe that, on the other hand, if he be allowed to report suspicions or possibilities without being compelled to swear to them as facts, the officer of any corporation of standing will be astute to aid the Government by calling attention to circumstances which he deems to create suspicion or merit investigation. If, in addition to this, it be made compulsory, as we suggest, to report such cases, even where no definite knowledge is had or can be obtained, the act will be more efficacious than it is now to catch those persons, if there be any such, who are reluctant to aid the Government. As the act now stands, they would surely find cover in many cases which, under the amendment we propose, they must report.

We believe that the amendments to subsection 7 (*a*), which we propose, have the advantage of insuring as nearly as possible a complete record of all property held by or for or on behalf of an alien enemy, and at the same time put upon the person who is suspected, with reasonable cause, of being an enemy, or ally of an enemy, or of holding property for an enemy or ally of an enemy, the burden of showing that he is not or does not. This is where the burden, in all fairness, should rest, for such a person, if not an enemy or ally of an enemy or representative of either, can readily show such fact, while others would find it in many cases very difficult to show the true situation.

FOURTH AMENDMENT.

On page 11, section 7 (*b*), from lines 11 to 17, both inclusive, substitute the following: "*Provided further*, That nothing in this act prevents the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of an enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of an enemy devolved by assignment, or otherwise upon a person not an enemy or ally of an enemy, and no enemy or ally of an enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder, or where the entering into, completing, or performance of such contract, agreement, or obligation shall be licensed, ratified, consented to, or approved by the Secretary of Commerce as provided in this act."

The fourth amendment is, to a certain extent, though not entirely, complementary to the first amendment above proposed. It is addressed principally to the modification of the prohibition against paying debts or choses in action, and carrying on, completing, or performing any contract, agreement, or obligation (subdivisions *a*, *b*, and *c*, p. 5, and sec. 3, subdivisions *a* and *b*, p. 6).

It is a common occurrence that in the ordinary course of business new parties are substituted for one or both of the original parties in contractual relation, and doubtless there are many cases in which a contract, originally by or with a person who is now an enemy or ally of enemy, has long subsisted primarily as

a contract between citizens. To illustrate this proposition two common examples will suffice:

Where a man borrows money on mortgage on his real property, in most States the transaction takes the form of a note or bond by the borrower for the repayment of the money, secured by mortgage on the land. If the borrower then sells the land, he nevertheless remains liable on his bond or note at least for the amount of the deficiency, if any, that may remain after foreclosure and sale.

So also if a man lends money on bond or note secured by mortgage and afterwards sells the bond or note and mortgage, he remains liable to his assignee as guarantor of payment, unless the assignment be in terms without recourse.

We do not know how it may be in other localities, but in New York and its vicinity a good mortgage will in practice stand for years. Within the week there came under the observation of one of the undersigned committee a case where a mortgage made September 30, 1847, is just being paid off. Cases where mortgages have stood for 20 or 30 years are common.

Investments in mortgages are almost as frequently made by purchase of existing bond and mortgage as by the making of a new loan.

It thus happens that there are many cases where by sale of the mortgaged property, or assignment of the bond and mortgage, or both, there has been substitution of parties in interest on one or both sides of the contract evidenced by the bond and mortgage. It frequently happens that there have been many successive substitutions by successive sales of property or successive sales of the bond and mortgage.

In years past many Germans have come to this country, earned money, and invested it here, either in the purchase of real property or in loans on real property, and have then later in life liquidated their investments and returned to live in Germany, leaving behind them a trail of bonds on which they are still liable either as maker or as guarantor, though they have long ceased to have any direct primary interest.

As the bill passed the House it would seem that in any such case the present owner of the bond and mortgage could not collect nor the present owner of the mortgaged premises pay, for to do so were, by virtue of the continued liability of the enemy, to pay his debt, to pay a chose in action for his account and to complete or perform for his account a contract, agreement, or obligation.

The theoretical benefit that would accrue in such cases to the enemy from his release from ultimate obligation seems too speculative and unsubstantial to justify infliction of such loss or hardship on the American holder of the assigned bond and mortgage.

Our proposed amendment in this respect was rejected by the House. We have thought it may have been because the House believed that under its cover a way might be opened to the fruition of plans made by Germans while the war was imminent, and in coming before the Senate we have accordingly added to our amendment, after the words "prior to the beginning of the war," the words "and not in contemplation thereof."

FIFTH AMENDMENT.

On page 13, line 16, section 8, after the word "that," insert the words "notwithstanding anything in this act contained"; and in line 19, after the word "may," insert the words "continue to hold the same, and."

This amendment is proposed in order to make clear what we believe to be the real meaning of section 8 and to remove a doubt which might otherwise arise whether the provisions of section 8 were not to a certain extent in conflict with the provisions of section 7 (*c*). As the act now stands, it might be interpreted as safeguarding the mortgagee, pledgee, or lienor only if and to the extent that the Secretary of Commerce should refrain from exercising in respect to the mortgaged or pledged property the powers conferred by section 7 (*c*), whereby he may require that property or money owing to or belonging to enemies shall be transferred and delivered to the alien-property custodian. We do not believe that this is the intent of Congress, and we do not believe that it lies within the power of Congress to deprive a citizen of the United States of the possessory rights which he shall have at the time of the passage of this act as an incident to his mortgage, pledge, or lien. But, as the act now stands, we know that in many quarters it has created a sense of uneasiness and insecurity. This will be removed by the adoption of the proposed amendment.

SIXTH AMENDMENT.

On page 12, line 9, section 7 (*c*), after the words "President shall prescribe," add a new sentence, as follows: "In any case where the Secretary of Commerce shall have reason to believe that the owner or creditor or other person to be benefited by a delivery of property or payment of money is an enemy or ally of enemy, he shall have authority to order that, pending investigation of the facts by him, no payment or delivery to any person shall be made."

Our sixth amendment should be considered complementary to the second and third.

As section 7 (*c*) now stands, the Secretary of Commerce is given power to act in doubtful cases "after investigation" by requiring payments and deliveries of a suspicious nature to be made to the alien-property custodian. It may be that the power to investigate implies power to issue orders which will keep the situation in statu quo pending the investigation, but it seems to us that this important power ought not to be left to implication but should be expressly conferred. If this power is not conferred by the act the person from whom the payment or delivery is due is placed between the two horns of a dilemma; if he pays or delivers, the Government may later prosecute him, and if he does not pay or deliver, awaiting investigation, he may be liable to the creditor who later proves that he was not an enemy or ally of enemy.

SEVENTH AMENDMENT.

On page 13, between lines 15 and 16, add a new subsection "*e*" to section 7, as follows:

"7. (*e*) Nothing in this act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States, not an enemy or ally or enemy, for the beenefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war and not in contemplation thereof.

This amendment is complementary to the first amendment above proposed. In discussing our first amendment we set forth at length the nature and multiplicity of cases in which credits are in the ordinary course of business transferred from a foreigner to a citizen, and in many of which in the course of such transfer a citizen becomes obligated. Under the heading of our first amendment we discussed only the proposition that because at common law, as derived either by direct expression or necessary corollary from the decisions of our own Supreme Court of the United States, such payments were lawful when made, it were unjust to now pass legislation purporting to nullify them. We now advance the additional proposition that where, pursuant to arrangements completed prior to the outbreak of the war and not in contemplation thereof, credits were transferred before the beginning of the war to a person who is a citizen of the United States or not an enemy or ally of enemy, future payments in accordance with such transfer of credit ought not to be prohibited by this act.

Take, for example, the common case of a draft by a German on an American commercial house payable to the order of a citizen of the United States six months from sight, and presented for acceptance and accepted by the American house before the beginning of the war.

It is true that the prohibition by this act of a payment in accordance with such transfer would protect the drawee even in a case where by acceptance or confirmation of credit he has become otherwise obligated. But the payee would in the ordinary course of business in reliance upon such acceptance or other transfer of credit incur his own obligations, for commercial transactions are ordinarily entered into in reliance upon not merely cash in bank but moneys to be received. To prohibit now the making of payments in accordance with credits transferred prior to the beginning of the war would undoubtedly operate as a great hardship, and possibly in some cases disastrously, upon the person to whom such credits were so transferred.

Take also the case where prior to the beginning of the war a German draft on New York was sold, but has not yet been paid. It would be a direct loss to the purchaser to prohibit the payment of such draft.

It would seem that no substantial interest of the Government requires or will be subserved by the prohibition of payments in accordance with transfers of credit completed prior to the beginning of the war. It has been urged that

such payments might operate to increase the credit of the German. The benefit to the German seems purely fanciful and speculative. The detriment to the citizen of the United States or foreign friend is direct and substantial.

Our seventh amendment was proposed to the House, but rejected by it. Since such rejection we have added the words "and not in contemplation thereof." In the shape in which it now stands it seems to us that it could not possibly be made the cover for any objectionable transaction.

EIGHTH AMENDMENT.

On page 25, strike out lines 24 to 25, both inclusive, and on page 26, strike out lines 1 to 5, both inclusive, and insert in their place the following:

"The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this act, and, acting under the supervision and direction of the Secretary of Commerce, and under such rules and regulations as said Secretary, with the approval of the President, shall prescribe, may manage such property and do any act or thing in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any right which may be or become appurtenant thereto or to the ownership thereof, in like manner as though he were the absolute owner thereof, to the end that the interests of the United States in such property and rights or of such persons as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificate upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him."

Many occasions will arise in which it will or may be highly prejudicial to the interest of the United States and citizens thereof, as well as to the alien owners, if property in the hands of the alien property custodian be held in a dead hand.

It is quite certain that the custodian will come into possession of many stocks and bonds and that many occasions will arise where value will be lost or the interests of other stockholders and bondholders be prejudiced, perhaps vitally, or both, unless the alien property custodian be vested with power to act.

Of this we give a few examples by way of illustration:

Very frequently the right granted to stockholders to subscribe at par for increase of capital stock has considerable market value. Right to subscribe always has a time limit at the expiration of which the right and its value is gone unless subscription be earlier made or the right be earlier sold. It were inadvisable, perhaps, to permit the alien property custodian to invest funds in subscriptions to such new issues, but the provision in our proposed amendment that the powers conferred shall not apply to money would preclude this. On the other hand, from whatever viewpoint it be looked at, it would seem that the alien property custodian ought to be clothed with power to realize on the value of the subscription right by sale.

So also under the State laws creating corporations, generally such matters as the increase of capital stock, creation of new classes of stock, and amendments to charter, and frequently the mortgaging of corporate property require the consent of the holders of a specified proportion—usually two-thirds or three-fourths—of the outstanding capital stock. It may become vital to the interests of the corporation, and not only to the value of the stock held by the alien property custodian, but to the value of the stock held by citizens of the United States, that stock belonging to alien enemies and held by the alien property custodian be voted, or that consents be given in respect thereof. It is true that it has been held that during war for certain purposes stock held by the enemies is not to be regarded as outstanding, but that can hardly be true for the purposes of such specific provisions as are above referred to.

Very often corporate mortgages securing bonds contain provisions requiring the request or consent of a majority or more of the outstanding bonds to declaring principal due for default, foreclosure, or other matters for the protection

of the interest of bondholders. There may be many cases where it will be essential to the protection, not only of the bonds held by the alien property custodian, but to the protection of the interest of citizen bondholders, that the custodian be clothed with power to take such action.

German holdings of American bonds are very large. Bankers have called our attention to the fact that of one well-known issue of railway bonds, $35,000,000 were subscribed by Germans, and that of another well-known issue about one-third of it is owned by Germans.

Reorganization of a failed or failing corporation is usually initiated by a deposit of bonds or stock or both under an agreement which creates a committee, clothes the committee with power, among other things, to promulgate a plan of reorganization and to use the deposited securities in the acquisition of the corporate properties through foreclosure or otherwise, and provides that a plan of reorganization so to be adopted shall become effective when consented to by the holders of a certain specified proportion of the deposited securities. It generally provides that the reorganization shall be accomplished by the transfer of the properties of the old corporation to a new one and the distribution of all or some part of the securities of the new corporation to the holders of securities deposited under the reorganization agreement, either in lieu of their old securities or that and upon additional terms.

There are doubtless now under way reorganizations in which prior to the beginning of the war many securities belonging to Germans or Austrians were deposited with the reorganization committee and where by the very terms of the reorganization agreement the committee will be paralized and the interests, not only of the alien depositors but of others, will be jeopardized, if not wiped out, unless the custodian have power in the premises.

Moreover, it is not improbable that during the course of the war necessity for reorganization will arise, where, if securities be held by enemies, reorganizations will be impracticable through inability to procure the deposit of an adequate amount of securities.

The House has designedly omitted in the bill passed by it to pledge the Government to return property in the hands of the custodian to its alien owners at the end of the war. It must be assumed that this is because it contemplates that emergencies may arise in which it will be advantageous to the Government to be in a position to take the whole of such properties over to itself. It would seem, therefore, that, for the purposes of this bill, the Government must be regarded as, potentially, at least, the ultimate owner of all property in the hands of the alien property custodian, and that, therefore, not only as a matter of fairness to the alien, if in the end it be deemed just and compatible to the interests of the United States to return his property to him, but as a matter of interest to the United States as possible ultimate owner, the Government should be clothed with adequate power to safeguard and protect the property so committed to its custody.

As a matter of principle it would doubtless be unwise to clothe an executive department with powers which might be used for purposes of speculation, but it is believed that the provision in our amendment which excepts money is an adequate safeguard against this. If the custodian sell any property, he must immediately turn the proceeds into the Treasury, and, therefore, it will be impossible for him to speculate.

Respectfully submitted.

J. G. Boston,
H. A. Moore.
A. S. H. Bristow.

July 24, 1917.

The Chairman. We will adjourn now until to-morrow morning at 10 o'clock.

(Whereupon the subcommittee adjourned until Tuesday, July 24, 1917, at 10 o'clock a. m.)

TRADING WITH THE ENEMY.

TUESDAY, JULY 24, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled pursuant to adjournment at 10 o'clock a. m. in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present: Senators Ransdell (chairman), Vardaman, and Fernald.

Also present: Hon. Charles Warren, Assistant Attorney General of the United States; J. S. Boston, Esq., of the firm of Cadwallader, Wickersham & Taft; Albert Lee Thurman, Esq., Solicitor of the Department of Commerce; Mr. J. S. Edgar, representing the Diarsenol Co.; Hon. Herman A. Metz, representing Farbwerke-Hocchst, of New York; and Mr. R. W. Buck, of New York.

The committee resumed the consideration of the bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes.

The CHAIRMAN. Mr. Boston, you may resume your testimony.

STATEMENT OF J. G. BOSTON, ESQ.—Resumed.

Mr. BOSTON. After the hearing was over yesterday Mr. Warren and I had a talk about the subject matter of what I was speaking about, and while I can not say that we agreed upon a substitute, I think we separated with the feeling that probably the best thing to do with that subdivision 7(b) was to provide that nothing in this act validates or shall be construed to validate any transaction had or any thing or act done prior to the passage thereof which was unlawful when had or done, and then make subdivision 7(b)—the rest of it—wholly prospective in its operation, and that would eliminate most of the suggestions that I made yesterday.

Mr. WARREN. Section 7 (b), especially now if Mr. Boston's amendment were made, would be a very clumsy piece of legislative drafting. It is not now in the shape in which it was originally submitted by our committee, and the House has put in several words, I think without a full conception of their effect on the bill. In a bill relating largely to legal matters amendments made hurriedly during debate, without full consideration of their bearing on other portions of the bill, frequently result in accomplishing something other than what was intended. Instead of having two provisos and one exemption, as Mr. Boston suggested, I am inclined to believe that the suggestion I made yesterday, which Mr. Boston has just spoken of, would be more satisfactory, and we can get that in better shape.

The CHAIRMAN. It would be in much more concise legislative shape.

Mr. WARREN. Yes.

The CHAIRMAN. Do I understand you and Mr. Boston agree on that?

Mr. BOSTON. We have not agreed.

The CHAIRMAN. I hope you can get together on that.

Mr. WARREN. I hope we can cover that in very concise language, and achieve all that is intended. The necessity for a clause which shall specifically provide that nothing in this act shall be construed to validate anything that was unlawful prior to its passage is shown by the memorandum in the case of Mathews v. McStea. We would like to preserve any rights that the Government has and any rights that private citizens have in regard to the legality of transactions engaged in after the declaration of war and prior to the passage of this act. Mr. Boston and myself do not quite agree as to whether the particular lines of transactions that were spoken of yesterday were illegal. I am inclined to think they were not, and he is inclined to think they were. Of course, we would simply make the rest of section 7 (b) prospective in its operation, so that there would be no doubt that such transactions and others of their kind (covered in broad language), shall hereafter be illegal, unless done with the license of the Secretary of Commerce.

The CHAIRMAN. Then I understand there is no substantial disagreement between you and Mr. Boston?

Mr. BOSTON. I think there is absolutely none in principle.

The CHAIRMAN. Then you can get together and frame language for that section?

Mr. WARREN. I think we can get together; and in my draft, Mr. Boston, I have seen no objection to including what you term your fourth amendment, striking out the last five lines.

The CHAIRMAN. Where is this?

Senator FERNALD. It is on page 7.

Senator WARREN. It is Mr. Boston's fourth amendment.

The CHAIRMAN. I have it here—the fourth?

Senator FERNALD. Yes; the fourth.

Mr. WARREN. He wants an addition there, and I am inclined to think, as I recall, that I did not disagree with that when it was submitted to the House committee.

Mr. BOSTON. My impression was that when we saw you at your office you were favorably inclined to it.

Mr. WARREN. I think I agreed in that; but the House committee did not adopt it.

Senator FERNALD. That is satisfactory.

Mr. BOSTON. For the time being, I will say, striking out the words beginning "where the entering into"

Mr. WARREN. Yes; "or where the entering into"

Mr. BOSTON. I would like to say just a word about that, in view of the fact that the House left it out.

Section 3 defines as within the term "to trade" the following [reading]:

(c) Enter into, carry out, complete, or perform any contract, agreement, or obligation.

That is line 24, page 5. Now, there are a great many contracts originally made with a party, who is now an enemy or ally of enemy,

in which other parties have been substituted for him in the contractual relation, but in which he still maintains at least a theoretical interest—assignments of contracts of one sort or another. I will use the illustration that I used with Mr. Warren when I saw him before.

Mr. WARREN. Theoretical liability rather than interest, do you not mean?

Mr. BOSTON. I say theoretical, because, as a matter of fact, it is not—and I speak from the depths of experience when I say it—it is not once in a hundred cases that you ever collect anything on a deficiency judgment, anyhow. I do not know how it may be in other parts of the country, but in New York a good mortgage is apt to stand a very long time. I had one the other day; I was dictating a memorandum in my office and one of my associates showed me a mortgage he had, drawing a satisfaction of it then, which was made in 1847 and had been standing all this time and was just being paid off. On the other hand, investments in mortgages are with us, I should say, almost as frequently made by purchase of a mortgage as by investment in a new mortgage.

So, also, we have had in New York a great many Germans who have come there as young men and have gone into business and made money and made investments of one sort and another, and as they grew older have gone home; so that I think I can say with confidence that there are outstanding in New York a very large number—not an overwhelming number, but you will remember that I am simply using this as an illustration, and I will say a very large number—of mortgages—bonds secured by mortgages—which were originally made by a man who is now, within the definition of this act, either an enemy or ally of enemy.

Now, I have rather switched to another aspect of things. There are cases where the original investment was made by a German, and he has long since assigned the bond and mortgage. The probabilities are that for 10 years that has been the property of a citizen of the United States. The alien is still liable to his assignee, however remote, on his implied guaranty of payment in all cases, except where the assignment is without recourse, and that is a precaution that is not very often taken by the individual.

On the other side of the case the German invested in real property and then he mortagaged that, gave his bond secured by mortgage, and sold his property. He is still liable on his bond.

On a literal reading of this act, in a case of that sort our German friend may have been out of the transaction for 10 or 15 years, but the owner of that bond and mortgage could not foreclose it, the owner of that property could not pay it off, because it would be completing and performing a contract made with an enemy. I think the courts would strain, of course, to avoid any such interpretation; but it is there is the expression of the act, if it be interpreted literally, and that is the reason that we suggested that fourth amendment, and we have tried to safeguard it so that it can not be made the cover for anything that ought not to be done, because it reads in this way (reading):

Provided further, That nothing in this act prevents the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning

of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved.

And so forth; and we had thought that that would meet the objections that you had before.

Mr. WARREN. I did not object to that.

Senator FERNALD. I do not see any objection to that.

Mr. WARREN. I did not object to it. I did not personally believe that the act extended so far as Mr. Boston thought it did, because I do not think that where payment is accepted or made of a bond or mortgage, that is the carrying out or completion of a contract; but I have no objection to this.

Mr. BOSTON. That will be our fourth amendment, with the words "or where entering into," etc.—from there on—stricken out.

The CHAIRMAN. How is that, now? I did not quite catch what you said.

Mr. BOSTON. If you will turn to page 3 of our pamphlet containing the amendments, there——

The CHAIRMAN. I have your pamphlet before me.

Mr. BOSTON. As I understand, Mr. Warren says that he has no objection to that fourth amendment.

The CHAIRMAN. Beginning on page 2 of that pamphlet?

Mr. BOSTON. Beginning on page 2.

The CHAIRMAN. Substituting that for lines 11 to 17, both inclusive, on page 11?

Mr. BOSTON. Yes.

Mr. WARREN. I have no objection to that substitution. I have an objection to the insertion of this amendment, but it is not a substitution.

The CHAIRMAN. Have it then in addition, instead of a substitution. Is that so, Mr. Warren?

Mr. WARREN. Perhaps if Mr. Boston will just state what is stricken out of his amendment then I can say.

Mr. BOSTON (reading from bill):

Provided further, That no person shall by virtue of any assignment, indorsement, delivery, or transfer of any debt, obligation, or chose in action, made or to be made in his favor by or on behalf of an enemy or ally of enemy, have any rights or remedies against the debtor, obligor, assignor, indorser, or the person delivering the same, unless under license as provided in this act—

Is there not something omitted there, Mr. Warren?

Mr. WARREN. This is defective language which was introduced in the debate in the House. I am not responsible for it.

Mr. BOSTON. I suggest striking it out because I do not know quite what it means.

Mr. WARREN. I suggest that what I am going to make will cover that. The original intent of the proviso—and I shall in my draft adhere to the original intent—was to prevent the collection of a debt owed to an enemy, or his realizing on bonds and securities by the simple device (which has been carried on ever since the war began) of an assignment by the enemy to a friendly neutral. The intent of that proviso, as originally submitted, was to cover that situation, and to deprive the holders of all assignments of debts and obligations made by an enemy since the war, of any right of remedy—at least, during the war. Now, it does not cover your amendment. Your amendment refers to assignments prior to the war.

The CHAIRMAN. The Chair will suggest that there seems to be no difference between you and Mr. Boston, and we will pass that for the present and ask you gentlemen to get together, if you can.

Mr. WARREN. We can do that, I think.

The CHAIRMAN. And that will save trouble, and we can pass on to the rest.

Mr. WARREN. We do not differ at all.

The CHAIRMAN. I am sure you do not, sir; and we will now take up the next point, if you please.

Mr. BOSTON. I think the next thing is perhaps the most troublesome problem that we have to deal with. That second amendment is section 3, is it not, Mr. Warren?

Mr. WARREN. What?

Mr. BOSTON. The section calling for reports?

Mr. WARREN. It is 7 (a), on page 9.

Mr. BOSTON. That has two parts.

The CHAIRMAN. So that we may get the connection, will you tell us what it is you are going to talk about now?

Mr. BOSTON, I find a little bit of difficulty in saying beforehand, concisely, what I am going to suggest.

The CHAIRMAN. Are you discussing the second amendment in this document you have submitted to us?

Mr. BOSTON. Yes, sir; the second amendment.

The CHAIRMAN. That is page 9, line 18, section 7 (a)? Is that what you are discussing?

Mr. BOSTON. Yes, sir.

The CHAIRMAN. After the word "is," in line 9, you want to add the words "known to be or who such corporation, association, company, or trustee may have reasonable cause to believe is."

I think we should read the proposed language into the record, always, so that it may be understood what we are discussing.

Mr. BOSTON. Before I go to our suggestions, I want to say that in considering this, after we made up our amendments there, the thought has occurred to me that probably that word "stockholder" ought to be broadened a little.

Senator FERNALD. What is that?

Mr. BOSTON. It should be broadened—added to. The facts are that by far the greater part of the investment of foreign enemies in American stocks does not show up on the books of the corporations. I am describing a condition that is not due to the war but is an ordinary method of handling business. For convenience, the stocks, when bought, are generally registered in a street name, as we call it, either the name of a brokerage house or of some clerk in a brokerage house, and the only intimation that the books will give, ever, is that you may have such a thing as a dividend order, "Pay dividends to Kuhn, Loeb & Co. for account of such and such a bank, abroad," or something of that sort; or, it may stand in the name of some man whose connections you know are German, and you may have very good reason to believe that the real owner is German. Now, it has seemed to me that if you gentlemen leave that as it stands now, simply as requiring a report of stockholders, now it is true that later on down are the words "or in which he may have any interest," but it has seemed to me that you are going to get a lot of people who will simply give you a report of

those people whose names are on the books that look German, and if they do that you will miss nine-tenths of the big German investment in those stocks. It may be too close a criticism. It is not an amendment that I have suggested, but it does seem to me, gentlemen, that you will have an act which is better fitted to achieve the purposes of the Government and its application to conditions as they actually exist, if you make it perfectly clear on the face of this act that the corporation can not stop with its stockholders, but has got to report "We have a block of so many shares of our stock standing in the name of A. B. & Co.; they are the stockholders, but we think that stock undoubtedly belongs to a German"; and I think that you ought to make it clear that there is the duty to make the report not merely of the stockholders but of the men back of the stockholders, where you have your suspicions. I would like to suggest that to Mr. Warren for consideration. That is something we have not suggested before.

Mr. WARREN. Of course, the very next clause was intended to cover that. That is, the next clause provides: "Any person in the United States holding or having custody or control of any property," and so forth.

Mr. BOSTON. That would apply to the man.

Mr. WARREN. That would apply to the broker.

Mr. BOSTON. That would apply to the broker.

Mr. WARREN. We thought between the two, having required everybody, the owners and stockholders and all other persons having in trust or control of property to report anything they knew, between them, that was all that could be done; but anything that will make this more rigid I do not object to.

The CHAIRMAN. It seems to me this makes this a good deal more rigid, the way you have it written now. It says "Who is an enemy" and "Who is an ally of an enemy." The suggested amendment would make it read "Who is known to be or who such corporation, association, company, or trustee may have reasonable cause to believe is." You bring in the question of positive information as against reasonable cause for believing them to be an enemy. It would certainly enable the officers of the Government to be placed on their guard and to investigate in the light of the information furnished by the corporation. I think it is a good suggestion.

Mr. WARREN. I do not object to Mr. Boston's amendment, and I did not object to it before the House committee.

Mr. BOSTON. I would like you to think over the question whether that word "stockholder" ought not to be elaborated a little in the first clause.

Mr. WARREN. Is it possible to get it any broader than the language in line 25, "or in which he has any interest"?

Mr. BOSTON. Mind you, I am trying to make my mind like the mind of the man who is going to make that report.

Mr. WARREN. Yes.

Mr. BOSTON. He is not going to look at it as a lawyer would. The chances are that when he sees the word "stockholder" there, what he is going to do is to go to his books and run his finger down and say, "I do not see anybody that looks German there"; and in doing that he will pass three-fourths of the money invested by enemies, because

The CHAIRMAN. Is there anything further on that point, Mr. Boston?

Mr. BOSTON. Not unless you care to have me say something. I think it all explains itself. The second and third amendments are to cover cases where they have reasonable cause to believe.

The CHAIRMAN. Go ahead to the next one.

Mr. BOSTON. The fifth amendment is on page 13, line 16.

The CHAIRMAN. That is on page 3 of this pamphlet of amendments?

Mr. BOSTON. Yes; it is the fifth amendment.

The CHAIRMAN. Proceed, please.

Mr. BOSTON. I think the purpose of that is quite apparent. It occurred to us that there might be some thought that a man could go ahead and foreclose his pledge or lien provided the Secretary of Commerce had not theretofore said to him, "Give up your pledge to my custody," and it did not seem to me that it was the end or intent of Congress that anything like that should happen, and I make that suggestion in order to make it clear to the man who sits back of the desk and wonders what is going to happen to him.

The CHAIRMAN. What is next?

Mr. BOSTON. The next is the sixth amendment. That is page 12, line 9, section 7 (c). On page 11 of the bill you will find the provision that the Secretary of Commerce may direct money to be paid or property to be delivered to him, where, after investigation, he shall have determined that it is owing to or belongs to an enemy or ally or enemy. Our amendment there seems to us to be the natural and almost inevitable supplement to that provision, authorizing the Secretary of Commerce to investigate. It does seem that it ought to be clear that the Secretary of Commerce in any case where he thinks he ought to investigate can go to the man who has the property and say, "You hold that; do not pay it over, while I look into the facts." You must remember that in 9 cases out of 10 the man who holds that property is under obligation. If it is the property of a citizen and it is demanded and he does not pay it over, then he is liable for damages for conversion unless the law justifies him in the refusal. So that it seems to me that not only as an essential part of the efficient workmanship, but also as just protection to the American citizen, the Secretary of Commerce ought to have power to say to the man, "Do not give that property up; do not pay that money over until I have investigated it." Then the man who has the property knows where he is. He has an absolute defense to any action for damages or anything of that sort that may be brought against him, and he does not have to act at peril of the facts.

Mr. WARREN. I concur in that. I concurred in the House.

The CHAIRMAN. It looks very reasonable. That is amendment No. 6?

Mr. BOSTON. That is amendment No. 6. I think, now, that Mr. Warren and I have come to our irreconcilable difference, and that is on the seventh amendment.

The CHAIRMAN. That is on page 13 of the bill?

Mr. BOSTON. Yes; between lines 15 and 16——

The CHAIRMAN. Add a new subdivision (e) to section 7?

Mr. BOSTON. Yes.

The CHAIRMAN. Proceed.

Mr. BOSTON. I think that explains itself. I said yesterday that a great deal of business——

The CHAIRMAN. I think if you would read that suggested amendment into our record, Mr. Boston, it might help us when we go to consider this.

Mr. BOSTON. Very well. The amendment is to add between lines 15 and 16, on page 13, this new subdivision, as follows (reading):

(e) Nothing in this act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy for the benefit of such person or of any other person within the United States not an enemy or ally of enemy if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war and not in contemplation thereof.

The CHAIRMAN. That is intended to be a new section?

Mr. BOSTON. That is intended to be a new section, and it is intended to cover those cases that I spoke of yesterday, where obligations have been incurred by transfer of credits prior to the beginning of the war, and, as you will see, I have tried to prevent it from being made an instrument of any new transactions, and I think Mr. Warren feels that that is not a wise thing to do, and I have no doubt he will speak later on that.

The last amendment, the eighth amendment, is on page 25.

The CHAIRMAN. Page 25, lines 24 to 25, both inclusive. That proposes to strike out the paragraph beginning on line 24, page 25, and ending with line 5 of page 26,

Mr. BOSTON. Yes.

The CHAIRMAN. And insert in lieu thereof this paragraph which you suggest?

Mr. BOSTON Yes.

The CHAIRMAN. Please read that to the stenographer.

Mr. BOSTON. It is to strike out, on page 25, lines 24 to 25, and to strike out lines 1 to 5, both inclusive, on page 26, and for them substitute the following [reading]:

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property other than money, which shall come into his possession in pursuance of the provisions of this act, and, acting under the supervision and direction of the Secretary of Commerce, and under such rules and regulations as said Secretary, with the approval of the President, shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, in like manner as though he were the absolute owner thereof, to the end that the interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association or company or trustee or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificate upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

The CHAIRMAN. Now proceed with your testimony.

Mr. BOSTON. We have felt that it would be in some cases disastrous if the property in the hands of the alien property custodian is in a

dead hand. We have felt that he ought to be intrusted with powers of management. It is necessary that you give him the property, it seems to us; it is a matter that we have discussed a good deal over there, that he ought to be able to do those things which it may be found necessary to be done in any given case to preserve the property or some attribute of the property, and also be able to perform toward the American citizen stockholder or bondholder the duties of a co-stockholder or cobondholder. The simplest and most obvious proposition respects rights—subscription rights. Your alien property custodian will doubtless have a very large amount of corporate stock in his control. It is almost certain that somewhere along the line he will have some stock where the corporation will, during his custody, increase its capital stock, and, as is customary and as it must, give to the stockholders the right to subscribe to the new issues. That is often a very valuable right. Now, I do not believe that this property custodian would want to invest any new moneys in new stocks, but I do think that he ought to be placed in a position where he will not have to sit still and see a good many hundred dollars' worth of salable rights die by limitation because he can not do anything about it. He ought to have power to sell those rights. They are a marketable commodity. They are nothing to him. If his is the dead hand, they die, and there is value lost.

So there are many cases. Take corporate bonds. Very nearly every mortgage contains provision requiring the assent or direction of a certain specified number of bondholders in order to put the trustee in action. It is generally more than a majority, you might say in most cases two-thirds—either two-thirds or three-fourths. You might in any given case find that you would absolutely need requests or consents on the part of alien-owned bonds in the hands of the alien property custodian in order to set your trustee in motion. Frequently or generally the trustee may, if he will, proceed to foreclose without request of bondholders. He is given that discretion. I never knew one of them to exercise it yet. But when you come to the question of prematuring the principal for default in interest, I never saw a mortgage in my life that did not require the consent of a majority or more of the bondholders before the trustee could declare the principal due for default in the interest.

So you take matters like the increase of the capital stock, or the issue of new classes of stock; the laws of all of the States, I think without exception, make the vote of two-thirds or more of the stock essential to any such action as that. I believe that it has been held that for certain purposes during war enemy stock is regarded as not outstanding, but I do not believe any court would ever hold it so for the purpose of any such specific provision as I have cited.

Then in the matter of reorganization, you gentlemen, of course, are familiar with the mechanics of that. A certain amount of stocks or bonds are deposited under an agreement with a committee which constitutes the committee, for all purposes of reorganization, the owner of the deposited securities. The committee is generally clothed with power to formulate a plan of reorganization, and it is generally provided that the deposit agreement shall not become finally effectual until either a certain proportion of the securities outstanding or a proportion satisfactory to the committee are deposited thereunder. Then it is usually provided that the plan of reorganization which the com-

mittee promulgates shall not become effective until it is assented to, either expressly or by implication, by a certain proportion of the deposited securities. I am told by gentlemen who are familiar with the bond market that there has been a very large German holding in American bonds, so large that it is not imagining ghosts, but it is stating a reasonable probability to state that there will be cases where, unless somebody can act in respect to the foreign-held stocks or the foreign-held bonds—the enemy-held bonds—the American himself, the costockholder or the cobondholder, will be helpless and can not protect his interests. I do not think I need say any more, because my purpose has been merely to illustrate and not to catalogue.

The CHAIRMAN. Your substitute seems to give very full and complete powers to the custodian, and the language of the bill itself gives very limited power.

Mr. BOSTON. It gives very limited power. Now, I can well see that the public custodian may not be very happy over the gift, if he has to exercise that power, if it is to be made obligatory upon him to exercise that power, with all sorts of little corporations, it will work him to death; but it does seem to me that he ought to have it, because I think the chances are great that emergencies will arise when the power ought to be there, and it will be a matter of sufficient importance to justify the department in forming a judgment.

The CHAIRMAN. Would you like to say anything about that at present, Mr. Warren?

Mr. WARREN. No; I do not think so, except that amongst the amendments that you handed me yesterday I noted a very long, elaborate, and complicated amendment submitted by Senator Phelan, 8 pages long, which is to deal with simply one matter, and that is the question of reorganization of some certain and definite corporation, because it goes into great detail.

The CHAIRMAN. Yes.

Mr. WARREN. I should suppose that the whole of that amendment would become unnecessary if the amendment suggested by Mr. Boston was adopted, even if it should be advisable otherwise.

Mr. BOSTON. In every public aspect; yes. The only thing that would be left of Senator Phelan's amendment that is not in our proposed amendment, or covered by it, would be the declaration in Senator Phelan's amendment that the man who does not show up is presumed to be an alien enemy.

Mr. WARREN. That, of course, is a proposition that could never be admitted. That would apply to an American citizen who failed to appear in a reorganization, and would mean that he would be presumed to be an enemy.

Mr. BOSTON. Well, that is the only difference, I take it, between that amendment and our own proposition, except that ours is broader. I think that is all.

The CHAIRMAN. Is there anything else, Mr. Boston?

Mr. BOSTON. No, sir; I think not.

The CHAIRMAN. We are very much obliged to you.

Mr. BOSTON. Thank you, gentlemen.

The CHAIRMAN. You are the sole representative, I believe, of the New York Stock Transfer Association?

Mr. BOSTON. Mr. Saxon, of Cravath & Henderson, is with me here.

The CHAIRMAN. Does he wish to be heard?
Mr. SAXON. No, sir.
The CHAIRMAN. We will, then, hear Mr. Buck.

STATEMENT OF MR. R. W. BUCK, REPRESENTING CERTAIN NEW YORK SHIPPERS.

Mr. BUCK. I wish to be heard with reference to an amendment to section 13 of the trading with the enemy act; that is, to add to that act certain amendments to be known as section 14.

The CHAIRMAN. This is to be added after section 13; a new section, is it?

Mr. BUCK. A new section. Now, this entire section treats of trading with the neutrals of Europe, confining itself to trading with the neutrals in Europe. In all our bills, and in the espionage bill, we provide for the placing of an embargo on certain articles, but it seems to me there are three phases which we have to consider. First of all, we have to see that nothing goes into the central powers. Second, the thing is to see that the neutrals are satisfied. Third, we must see that our own trade is not being fettered with unjust discriminations.

In the first place, we are relying here on that the shipper himself is satisfied that the consignee will not send goods on from a neutral country. Say, for instance, we send a cargo to Sweden, and the Swedish people themselves give a letter of assurance, as is the customary practice, with which the Secretary of Commerce is familiar, that is to give a letter where the consignee states before the legally constituted authority, their chamber of commerce, generally, that he will not reship the goods out of the country, and that they are for home consumption. He makes oath to that before that authority, and that is transmitted by telegraph to the consul here of this particular nation, and he issues them what is called a Swedish letter of assurance. So far as we were concerned before the war that was satisfactory. The man merely gives his word that he will not send those goods on out of that country, and we send out the cargo of that material under that letter, unless we also decide to get a British letter. British letters were forthcoming, but very slowly. It has been very strange, sometimes; Great Britain has said that the purpose of its letters was that they would not permit anything to go to Germany; but the different ministers told me that in many cases when we in the United States had ordered 10,000 tons of rice, and some people here tried to furnish it, the letter from Great Britain was not forthcoming, and in the meantime they found that English merchants themselves contracted with the Danish to supply them; whereupon the southern people objected through their Senator—I do not know who it was in this case and I would not go into details any further—and then he was permitted to send this cargo.

In our own case we had been sending wax to the United Swedish Match Factory, and the British letter was not forthcoming, and they needed the wax so badly that they were going to take the risk of sending it across under Swedish letters, and so far as we were concerned we had no further interest. It was held up in London, and it was all right and was permitted to be sent on. In the meantime that boat had gone on, and it was unloaded in London. I maintain that

the British have not got such a perfect system there as to really know; they guess more, whether a product is going into one of those countries or not; and what we maintain is that we ought to have a perfect system there preventing anything actually going over there that might go to Germany, and at the same time giving them a sufficiency for their needs.

Take, now, for instance, in the espionage bill; we say Holland shall have so much and Sweden shall have so much and each other country shall have so much; Holland shall have as much as she consumes, plus so much. Take, for instance, oil. Five thousand barrels of oil is the consumption of oil for Holland, we will say. Holland itself produces a thousand barrels of oil, so that she can have 4,000 barrels of oil imported there. That 4,000 barrels of oil are sent in. Now, some people might ship it into Germany, and the innocent ones are going to suffer because the guilty ones ship part of that oil into Germany; and some people are abusing our shipments by sending them on, and as a result others who really need it will not get it. In this case we would like to have this: A commercial adviser to be appointed; the whole district of four or five nations—Switzerland, Holland, and the three Scandinavian countries—to be divided into districts, and each district to have a stationary commercial adviser appointed, and this commercial adviser will familiarize himself with his circle.

When we get an order from Bergen, Norway, we will notify the Secretary of Commerce, telling him that we are shipping, sending 1,000 barrels of oil to John Jones in Bergen in the month of August. He therefore cables, if he so desires, to the commercial adviser at Bergen, who thereupon investigates. He goes to John Jones and he says, "Here is an order for a thousand tons of wax to this firm in New York. What do you want to use that for?" He tells him what he wants to use it for. He says, "you realize that you have got to show exactly what you want to do with these goods if you want to get them."

The CHAIRMAN. I would suggest, Mr. Buck, that you explain briefly your amendment.

Mr. BUCK. The idea is this, Senator, and I will make the matter concise.

The CHAIRMAN. I suggest that you explain the amendment before proceeding further with what you were saying; that you explain the amendment of Senator Wadsworth.

Mr. BUCK. This amendment provides for a complete system of supervision on the other side in the five neutral states of Europe, namely, Switzerland, Holland, Denmark, Norway, and Sweden. Those are the only five nations involved in this. It provides that of these nations the territory shall be divided into districts, and that a commercial adviser shall be appointed for each district; that the commercial adviser shall render all aid to merchants in the United States, and inquire as to the character of the consignees, and if there is any danger that a consignee might not play fair in reference to reshipment of goods into the other countries of Europe. Furthermore, it provides that whenever we get an order from one of these neutral countries, then we shall give the name of the shipper, the name of the consignee, the goods and the amount thereof, as well as the date of shipment and the name of the vessel we wish to ship it on, to the Secretary of Commerce, who in turn is to give these particulars

to the commercial adviser of the district to which the goods are consigned.

The commercial adviser is then to investigate the goods there and ask the consignee to show what he is going to do with the goods, and so on. If the commercial adviser recommends the shipment of these goods to the Secretary of Commerce and the Secretary of Commerce finds no reasonable cause that the shipment should not go forward, he will then issue an American letter of assurance; and the American letter of assurance is necessary to get, from the shipper, before he can ship his goods. In other words, any captain or any man in control of a vessel is prohibited to take any cargo on board his ship except it is accompanied by such American letter of assurance. Then the Secretary of Commerce will also notify the commercial adviser of the district whether the letter of assurance has been issued or not, and then instruct him to supervise the cargo as it arrives there and find out whether the man actually lives up to his statement that it is for home consumption.

We have certain machinery abroad—commercial attachés attached to the different consulates—who give us reports from the entire districts of their consulates and give us general information, but what we need is a man that is stationary, a man that is in one district, to supervise every cargo that comes to that district, because he will familiarize himself so thoroughly with each merchant and what he is doing with the raw material and afterwards with the finished article that he will be a man much more capable of seeing to it that the district gets just so much that it needs and not more, and that there is no chance of goods being reexported out of the country into the countries of the central powers. At the present time there are opposing claims made. Swedent says, "Our exports and imports are such and such." England says, "No; they are different from that." Holland says, "Our exports and imports are such." England says, "No; they are different." So it goes all through. There is a continuous fight. Since the export council has been doing its work it has not given one single letter—one single license— to any neutral; and in the meantitme they are all sending their commercial delegates here, and they are in a very bad fix. We do not want them to feel hostile toward us. At the same time we do not want to have anything go into the central powers. And, furthermore, under the espionage bill, under the provisions thereof, as well as under sections 12 and 13 of the trading-with-the-enemy act, when we have our boat loaded in the harbor here it may be held up with the small tonnage that we have there, and it is certainly a detriment to have a big boat held in harbor for 30 days or longer because a certain part of her cargo might possibly go to the central powers. On the other hand, if there were letters of assurance issued after investigation by our commercial advisor over there, there would be no doubt about it; it would go through. Then, even if there were doubt about it, our advisor would be there to supervise this cargo on arrival. It would be understood that if a man violated his agreement there he would be shut off forever as a man that has violated his oath that a cargo was not going into the central powers.

We have here a perfect system. It will work three ways. It will prevent goods going into Germany, and it will satisfy neutrals be-

cause they will get what they need; and it will help our own shippers not to make any connections through which they will lose a pile of money.

Let us suppose, for instance, that we have an order for the Swedish match factories which make wax matches, for a quantity of wax. We buy the wax and put it on board a ship and get a license for that purpose, and then at the last minute we are held up. We stay in harbor. We are waiting. On the other hand, if we had to wait for licenses from the other side we would not buy wax until we had our license. We would not prepare the boat until we had the license. There would be no hold-up in any form or manner. You see, there is a great difference. In the first case the purchase is made after the license is issued and there is no danger then that these goods will go into the enemy's country. As for myself, we stopped immediately shipping on Swedish letters; when the war came we stopped. We said, "We can not control the people on the other side and we do not know whether they will ship these goods on to the enemy country." Even this license of the consul does not give any assurance that none of the goods will get to the enemy's country. We may give the wrong man a license and refuse to give the right man one, because the quota is exhausted.

For those reasons my opinion is there should be in every district a commercial adviser who investigates before acting, and after he reports that there is no danger, the Secretary of Commerce then could issue an American letter of assurance. In the shipping world an American letter of assurance would mean something then. It can not mean anything until we have it investigated on the other side. Licenses will mean nothing. A man at the last moment may find out from one of the advisers over there that he thinks some of these goods might get into the enemy's country, and he will hold up his shipment. Then it has to go through the courts, and then they will release it. It is essential that our commercial adviser over there is over there and has investigated. That is what we are fighting for, and if that can be done we know exactly how much shipping is needed and we will not lose any tonnage waiting in harbor, because we will not get a boat for our purpose nor will we buy the goods until we have a permit; and furthermore, in our trade after the war with these neutrals we will have a complete report as to all the products that those neutrals need, and how they need it, and that entire report will be so inclusive that afterwards our trade will continue.

The CHAIRMAN. Can you give us any idea how many agents the Department of Commerce has in these countries now?

Mr. BUCK. I do not know, but it is reported that during all this time the United States has controlled exports there has been an absolute embargo on cargoes destined to the neutral European countries. Since the act not a single cargo has been licensed for shipment to these nations.

Senator VARDAMAN. What is your interest in this?

Mr. BUCK. I am a shipper myself, I have a cargo now of rice for Sweden. I will not ship it.

Senator VARDAMAN. I commend the purpose of the amendment of Senator Wadsworth, and I think that we ought to keep goods from going into the enemies' countries, but why can not that function be

performed by the consuls, without making a great army of additional officers?

Mr. BUCK. It will amply repay the expense. There are not so many of these men needed there now; but these advisers should be in each district, and an adviser should stay in the district where he is placed, so that he may keep himself informed as to the actual shipments.

Senator VARDAMAN. Will anybody be in a position where they could acquire that information more readily than the consul?

Mr. BUCK. But the consul is itinerary, and he can not follow it afterwards. He goes from one place to another. He is in New York, and he has charge of New York and Paterson, for instance, if it was in that district, and all the commercial districts around there, and he can not follow up exactly afterwards and see whether these things afterwards, either in the raw state or in the state of finished articles, are going to another country.

On the other hand, our commercial adviser over there is in constant contact with the manufacturer, and he can say, "Where are you sending it to?" He tells the manufacturer, "If you want these goods, you have got to work in harmony on this."

Senator VARDAMAN. As a practical shipper, do you not think that that work ought to be done under the direction of the consuls over there?

Mr. BUCK. No; but under the direction of the commercial attaché. He can do that; he can have supervision of that.

The CHAIRMAN. How many commercial advisers do you think will have to be appointed under your plan? I notice that you want appropriated $650,000. That is appropriating a good, large sum of money.

Mr. BUCK. That is true; but even then, you see, Senator, when those shipments get over there and are tabulated, they are so large, relatively, and are of so much benefit to the merchants, that $750,000 would be a very small amount compared to their value. But, on the other hand, you can merely make the districts larger, and have clerks—they need not be such expensive men.

The CHAIRMAN. You leave it entirely to the judgment of the Secretary of Commerce to fix this?

Mr. BUCK. Yes; everything is left to the Secretary of Commerce—to organize it, to make the appointments, and to run it in the fashion he desires.

The CHAIRMAN. May I ask you if this matter was presented to the House?

Mr. BUCK. No; it was not presented to the House.

The CHAIRMAN. Of course it was not presented to the representatives of the four departments who prepared this House bill?

Mr. BUCK. This is the correspondence I have had with them. Mr. Pratt talked this matter over with me, and he said our bill was taken care of under the espionage law. Still, he did not seem to realize what we wanted. I could only have a five minutes' interview with him, and afterwards he kindly sent me a letter and I sent him a letter, and I got no satisfactory reply. He always refused to see me personally, and I could not get connected there. For days and days I have waited there just to get a voice—just to tell them what I wanted. I got no chance to explain things to him. He said: "I

read your letter, and that is all taken care of. On the 15th of July there will be American letters of assurance instead of British." Now, that is not the truth. He might have labored under the impression, but it has not come to pass as he said. We are absolutely at the present time—after getting our licenses we are not secure that our cargoes will not be held up.

The CHAIRMAN. I do not understand. Explain how you would be more secure if you had commercial advisers?

Mr. BUCK. If we had commercial advisers, exact information would be given upon personal inquiry.

The CHAIRMAN. Take the question of rice. You spoke of shipping rice yourself.

Mr. BUCK. Yes, sir.

The CHAIRMAN. Where do you wish to ship that rice?

Mr. BUCK. That rice is to be shipped to Gothenberg.

The CHAIRMAN. And how would the commercial adviser be sure that you were doing right?

Mr. BUCK. He goes and says: "Now, you want this for home consumption?" The shipper says, "Yes." "Where are you sending it to?" Then the shipper shows exactly where he is sending it to, and he gives up his books and everything. They are all willing to do that over there, you know, to let the adviser see the books. When it comes to the courts—when a thing is held up in London they have to go and bring the books, anyhow.

Senator VARDAMAN. What you ship to the allies now goes through London?

Mr. BUCK. Yes; everything goes through Halifax; that is, unless a man ships right through; and then because he does not stop at Halifax or at Kirkwall he is put on the black list. Even if he has an American letter of assurance he is put on the black list.

Senator VARDAMAN. What is the effect of that?

Mr. BUCK. He can not get an ounce of coal from Great Britain, and he will be held up. The effect of it is so far-reaching, Senator, that it is not wise at the present time to go into it deeper.

Senator VARDAMAN. How is that?

Mr. BUCK. It is not wise to go into it deeper.

The CHAIRMAN. Do not discuss it unless you think you should.

Senator VARDAMAN. I wish you would go into it. I would like to know about it.

Mr. BUCK. I will give you an instance. I was at the time with Madero Bros. We had an order for a cargo of wax for the United Swedish Match Factory. At that time I knew nothing about British letters of assurance. The man came there with Swedish letters of assurance. I asked him what that was for. He said so that the stuff would not be held up, and so that it would not go into Germany; so that they would use it themselves. I said, "Is that necessary?" He said, "Yes." I took the order, chartered a boat, and put the stuff on the boat, and I had some cargo space left, and I advertised that I would take goods with Swedish letters; and in the meantime I had heard also of British letters, and I said with Swedish and British letters on board, because I wanted to protect the wax that I had shipped for Gothenberg. A cargo was forthcoming very quickly, and after I had the cargo and had gotten my money paid, a Mr.

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Richardson called me up in New York. He said: "You are shipping to Sweden on Swedish letters." I said, "Yes."

Senator VARDAMAN. Who is Mr. Richardson?

Mr. BUCK. He is the consul sent by Great Britain to New York for this particular purpose. I said, "Yes." He said, "You know the Swedish people are pro-German, and their oath, so far as that is concerned, we could not believe in that kind of an oath that the Swedes made;" and we could not send it off. I said, "I am very sorry. Here is the boat, and it will cost $2,000 a day demurrage, and I have purchased the material and have gotten my money from all of them. I can not go back on my contract." He said, "I better notify you that that is not acceptable to Great Britain. Everything is Swedish letters of assurance." I said, "I will make you a proposition. Take a man and put him on board"——

Senator FERNALD. When was that?

Mr. BUCK. That was in October or November. I said, "Put one of your men on board and I will pay for his passage; and I will make him supercargo, and he can control the entire cargo and see whether it goes anywhere else. I want to protect that cargo. Although we are not financially interested after the ship leaves I want to take care of the consignees." He did not make any reply to that. The boat left and the minute she left harbor she was on the black list; and some agreement was made—I do not know what it was. She went to the Azores. What she had to do with the Azores when she had to go North I do not know. She was not our boat. There was a storm, they said, at sea. Afterwards she went to Falmouth and from there was convoyed to London, and the wax was released later, and I believe Mr. Morse was compelled to give his boat to the English on a year's charter, so that he was compelled to break his contract. So that that was that proposition.

Now, the next that happened was this. After that—that was the first boat I sent out—I went into the shipping business myself. I went to Great Britain to get a bunker agreement. I was not interested in fighting Great Britain. I knew Great Britain was in charge of the ocean. I wanted a bunker agreement.

Senator FERNALD. That cargo was taken off of that boat in Great Britain?

Mr. BUCK. Yes.

Senator FERNALD. And sent on to Sweden from there?

Mr. BUCK. It can be after the cargo is discharged. I do not think it is now. There is no use to send it there. Mr. Morse was compelled to deliver it there.

Senator VARDAMAN. That was before the declaration of war?

Mr. BUCK. Oh, yes; all of this was before the declaration I am telling now.

I wanted to get a bunker agreement, and I was told I could not get one because I had sent things to Sweden on Swedish letters of assurance. At the same time I had a lot of cargo for Italy and for France, and so on, and I was interested in general shipping. The result was that I went to Mr. Richardson. He absolutely, point blank, refused to give me a bunker agreement. Then I hired sailboats. I got a sail boat from Morse—that is, I did not get it from Morse, but it was like this: Morse had a yacht then at the Palmer shipyard, at Noank, Conn. A man connected with Morse in some

way or other called my attention to it, and I went and hired that boat and made my charter in Boston, and at that time they asked me first to make the charter with the new owner to whom they had sold it, but the owner would not take it until it was finshed, so that I made it with the shipyard. The minute the British heard of this—this is why Morse said he refused to let me have the boat—it was in the paper in Noank that this boat was going to Sweden, and it was of local interest to Boston because the owner was in Boston, and it was in the Boston papers, and the British consul in Boston saw it, who knew that the Noank yard belonged to the Morse outfit, so that he informed Mr. Richardson in New York, and he called up Morse, and he told me Richardson said, "If you give them that boat we will put you and all your boats on the black list," and "We do not allow that boat to go outside of the 3-mile limit." Mr. Morse said, "It belongs to Henry S. Reed, of Boston." So that they informed Henry S. Reed, of Boston, that that boat would be taken the minute that it went outside of the 3-mile limit, because it was to be sent on Swedish letters. They libeled the boat and I made my settlement, and I have no kick coming. That was an American vessel, with American letters of assurance.

Senator VARDAMAN. They do not do that now, since they got the loan.

Mr. BUCK. No; but you still have to ask for British letters, and the only information we are going by is the British, because it says here at the end [reading from newspaper]: "While the Government is negotiating with the British, it is still necessary to use British letters of assurance."

The system has worked very badly for every American ship, from one end to the other. I have been here at the British Embassy trying to see them day after day. Gentlemen, I am not interested in that at all. I gave them a statement, which I also gave to Mr. Letcher, the foreign trade adviser of the State Department. The matter has been thoroughly thrashed out, and Mr. Liederkranz, formerly minister from Sweden to the United States, tells me the statement is absolutely correct, and the Swedish say the same and the Norwegians and the Danish say the same.

This is merely to do three things, to see that nothing goes into Germany; to see that the neutrals are absolutely satisfied and are not becoming hostile to us; and, third, to see that our own trade is not being hindered.

The CHAIRMAN. Who would issue this letter of assurance?

Mr. BUCK. The Secretary of Commerce, after he has been informed by the commercial adviser as to the facts in the case.

Senator VARDAMAN. Have you any assurance that the English would respect that letter of assurance?

Mr. BUCK. I think they would. They give now a plausible reason——

Senator VARDAMAN. They might do it at any time, but they have not done it. It has been weakness on our part to permit them ever to have done what they have done.

Mr. BUCK. The Secretary of State has referred me to the British when I have done it. I have the letters and correspondence. I have [illegible] this three or four months. In the meantime the Depart- [illegible] has [illegible] ing me on the ground that I am

pro-German, and two men have been at my office, looking over every shred of my papers and affairs on the ground that I was pro-German.

Senator VARDAMAN. Have you anything else to say on the merits of this amendment? If so, go ahead.

The CHAIRMAN. You say you represent the Equitable Navigation Co. Is that a corporation?

Mr. BUCK. That is just a corporation that I formed for my shipping.

The CHAIRMAN. Are there any other shipping people who are impressed with the same ideas you have and who are making the same fight that you are making?

Mr. BUCK. There are some of them, but they are all afraid. Even in their connection with me, they had to do all that underhand at the time, because I had sent over things under Swedish letters.

The CHAIRMAN. You are stamped with the black hand, as it were, then?

Mr. BUCK. Yes. I can always form a corporation, of which I hold the shares, and can do business in that way. I am not complaining. Every time they have interfered I have made money out of it. But I am only sore, because I am an American, at being treated in this way. That is all.

The CHAIRMAN. Is there any other point you wish to bring out?

Mr. BUCK. Yes. It is very essential that we proceed very quickly on this matter, because they are actually, all of them, in such need over there, in Sweden and in Norway especially. They have hardly anything to eat. For instance, take the fertilizer in Holland, they need fertilizer. They do not need fertilizer for dairy products, but to make grain and things that they send over here; and salts of ammonia. The people in Switzerland say that they have to have coal in exchange for dairy products, to and fro. They say, "We are very anxious to keep out of the war, but we are becoming desperate." Every one of those nations is becoming desperate, and they are not in a position to side with us. You can not realize what that means; you can not realize what it would mean if they did side the other way—with Germany. That is the reason I am thinking every day that it is more essential that we should satisfy these people. Here is Mr. Liederkranz, and he can not get anything through—a man sent here especially by the King of Sweden for the purpose of regulating this commerce.

It is essential that we have these commercial advisers over there without delay. If Great Britain will not take our American letters, then when they have investigated every source of information, have looked into everything they suspect, and our commercial adviser has investigated and found a shipper either bad or good, then it is——

The CHAIRMAN. Your contention is that the Secretary of Commerce does not have sufficient machinery through his own commercial attachés, and through the consuls, who of course are connected with the State Department, to get the necessary information on which to issue these letters of assurance, and that in order to do that properly you must have this additional machinery you suggest?

Mr. BUCK. Yes; that is my contention; and if this is created through Congress, it will have more weight with other nations, too.

The CHAIRMAN. Mr. Albert Lee Thurman is the next gentleman to be heard.

STATEMENT OF ALBERT LEE THURMAN, ESQ., SOLICITOR, DEPARTMENT OF COMMERCE.

Mr. THURMAN. Before the committee comes to any conclusion in regard to this amendment of Senator Wadsworth, I would like very much to have an opportunity of taking the matter up with Secretary Redfield.

The CHAIRMAN. We would be glad if you would.

Mr. THURMAN. It is the first time that it has been called to my attention, and I do not think it has been called to the attention of Secretary Redfield. It is a matter entirely for the espionage bill and not properly under trading with the enemy, and I am inclined to think that our machinery under the espionage bill is sufficient.

The CHAIRMAN. You will look into that and report to us, if you please?

Mr. THURMAN. Yes. If I may be permitted, I want briefly to call the attention of the committee to a proviso in section 6 of the House bill on page 8, beginning with line 23, and running over through line 7, on page 9. That provison was inserted in the House; that is, either in the House or the House Committee of the Whole, I do not know which. It was not in the original bill.

Mr. WARREN. It was inserted in the House during the debate.

Mr. THURMAN. It is the last part, on page 9, that the department thinks should not be inserted in the bill. I, personally, see no reason why it should be there and, on the contrary, I believe that it will very materially interfere with the carrying out of the administrative features on the part of the department. The proviso on page 9 reads as follows (reading):

> *Provided*, That no person shall be appointed who is liable to be drafted into the military service of the United States.

While it does not say so specifically, I suppose it was intended to apply to men between the ages of 21 and 31.

Senator FERNALD. Above that?

Mr. THURMAN. Above that; yes, sir. There is no reason in the world why that should be in this bill. The Army draft bill does not exclude from draft employees of the Government. They have their positions subject to draft. So that if we find it is necessary to appoint men to carry on this work within the prescribed ages, and they are drafted, the mere fact of their employment does not exempt them. Therefore, the whole thing seems to be perfectly futile.

Senator VARDAMAN. As a matter of fact, it occurs to me that if you should find men especially equipped for this work they could serve the country there better than in the trenches.

Mr. THURMAN. Exactly so. The whole matter appears to be perfectly simple.

The CHAIRMAN. You say it was put in on the floor in the House?

Mr. WARREN. Yes.

Mr. THURMAN. So Mr. Warren says. It was not in the original bill as prepared by Mr. Warren.

The CHAIRMAN. You see no reason why it should be put in this bill?

Mr. WARREN. I think it is a matter for the committee.

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Senator VARDAMAN. I see every reason in the world why it should not be in.

The CHAIRMAN. Are there any other suggestions?

Mr. THURMAN. No, sir; that is all that we have.

The CHAIRMAN. You will take this other matter up with Secretary Redfield, please.

Mr. THURMAN. I will do so to-day, if I can.

The CHAIRMAN. You do not know of any matter, while you are on your feet, that you care to call to the attention of the committee?

Mr. THURMAN. No, sir.

The CHAIRMAN. Does Secretary Redfield care to come here himself?

Mr. THURMAN. I do not think he cared to come this morning.

The CHAIRMAN. I know that he testified very fully before the House committee.

Mr. THURMAN. He said that he was very busy this morning and he would not come here unless the committee wanted him specially to do so.

The CHAIRMAN. I know of nothing special which should bring him here.

This gentleman, Mr. Edgar, was here yesterday, I think; and you desire to be heard?

Mr. EDGAR. Yes, sir.

The CHAIRMAN. Very well, we will hear you.

STATEMENT OF MR. J. F. EDGAR, REPRESENTING THE DIARSENOL CO., OF TORONTO, CANADA, AND BUFFALO, N. Y.

Mr. EDGAR. I am representing, sir, a prospective licensee under section 10 of this bill.

The CHAIRMAN. Where are you from?

Mr. EDGAR. From Toronto, Canada. I represent the Diarsenol Co. (Ltd.), of Toronto, and a new corporation which is incorporated or is about to be incorporated under the laws of the State of New York, called the Diarsenol Co. (Inc.).

It is this latter corporation that proposes to apply for a license under section 10 of this bill.

The patents in question are the patents known as the salvarsan patents. There are some four important patents, and those patents, I think, will be patents that this bill will affect more than any other patents, on account of the great necessity that there is for the article covered by these patents.

It appeared by the evidence before another committee of the Senate, the tremendous necessity there has been for salvarsan, or one of the other products. I do not know exactly what quantity has been used in the United States, but whatever the quantity is that has been used, I do not think it is one-tenth of what ought to be used, from the evidence that has been given by the various medical men who have looked into this question. That is to say, if the various State boards of health take up the matter as a charity, there will be a tremendous amount of this product used.

It appeared from some remarks that were made on the floor of the House—I do not know whether they were made authoritatively or not—that it was the intention only to grant one license—an exclusive

license—for this product. I do not know who would get that license, if that is the case, nor do I know whether there was any reason for making that statement or not, but I feel this very strongly——

The CHAIRMAN. Do you recall who made the statement?

Mr. EDGAR. I do not recall, sir. It was in the debate on either the 10th or 11th of July. There was some question raised. They were discussing the word "exclusive" or "nonexeclusive," and it was suggested by somebody, whether they had any authority or not, that there should be but one license.

The CHAIRMAN. Was that remark intended to apply merely to salvarsan, or was it to apply to any of the innumerable patents that would be covered by that?

Mr. EDGAR. As I said before, salvarsan, neosalvarsan, and a patent in regard to the alkaline solution—that is to say—and another patent in regard to the bottling—and those are the four patents—and I suppose it would apply to all of them—anyone applying for license would apply for license under these four at least, if not for other patents. We say from the requirements of the public in the United States that one license would not be sufficient, particularly in view of the fact that the people I represent have been sending a very large quantity of their product into the United States during the past two years. In fact, they have been sending in at the rate of practically $100,000 worth a year lately, and it is a gradually growing business.

Senator VARDAMAN. Where is the business of your concern located?

Mr. EDGAR. At present it is in Toronto; but steps are being taken to have a company in New York State, in Buffalo, and, if necessary, to manufacture there when a license is obtained.

The CHAIRMAN. Your company is called the Diarsenol Co., and it makes diarsenol and neodiarsenol—the two products?

Mr. EDGAR. Yes, sir.

The CHAIRMAN. Is it your contention that it has the same properties and produces the same effects as salvarsan?

Mr. EDGAR. Absolutely. It is the same thing.

Senator VARDAMAN. Your company is not a German company?

Mr. EDGAR. Oh, no, sir. There are two young Canadians, Macalium and Candee, who applied for a license from the Canadian Government, under provisions similar to provisions of this act, and they also have a license in England granted by the British Government.

The CHAIRMAN. They are manufacturing in England, then, under a license obtained there, and in Canada?

Mr. EDGAR. They are manufacturing in Canada and exporting to England.

The CHAIRMAN. Exporting?

Mr. EDGAR. Yes; they are not manufacturing in England.

The CHAIRMAN. Under relations similar, under license similar, to that which can be granted under this bill if it becomes law?

Mr. EDGAR. What is that?

The CHAIRMAN. Are they operating under a license similar to that which can be issued under this bill should it become a law?

Mr. EDGAR. Yes; somewhat similar. The terms of the license, of course, are yet to be fixed.

In connection with that matter, of course I have had to look carefully into the provisions of this bill to see what position they would

be in if they applied for and obtained a license, and there is one thing that occurs to me. It may not be right, but Mr. Warren do doubt would be able to consider it and advise on that. That is this, that after the termination of the war or after the termination of the license, the German patentees will have two alternatives. They may either recognize the license and bring the suit that is provided for in the bill and recover a reasonable royalty, or else they may disregard the license and bring a suit in equity or an action at law for infringment of patent; and they would then be entitled to recover the whole of the profits of the licensee; so that the licensee might be incurring that liability.

Mr. WARREN. Where do you get that?

Mr. EDGAR. I get that from the reading of the whole act, sir.

Mr. WARREN. A license issued by the United States Government, of course, would be a defense against any action for infringement?

Mr. EDGAR. It does not expressly provide that, but it would be an answer to a suit for infringement while the license existed. No injunction could be obtained. But there is no provision such as the provision that we have in Canada, and that is that the patent is suspended as regards the licensee. If it was not desirable to suspend the patent, a special provision might be inserted to the effect that, except by suit as provided in this section, the patentee or owner of copyright shall have no other recourse, at law or in equity, against his licensee under his patent or copyright. If that was put in it would put it beyond all preadventure of doubt.

The CHAIRMAN. Where do you suggest that being put in?

Mr. EDGAR. At the end of subsection (g) or at the end of subsection (f).

The CHAIRMAN. Let us get those words, so that we can understand them clearly. I will write them down if you will give them to me again. At the end of subsection (f) or at the end of subsection (g), after the word "war," in line 21——

Mr. EDGAR. Yes.

The CHAIRMAN. Insert what words?

Mr. EDGAR. Insert the words "except by suit as provided in this section, the patentee or the owner of a copyright"—I suppose it should apply to both—"shall have no other recourse, at law or in equity, against a licensee under his patent or copyright."

The CHAIRMAN. Is that all of it?

Mr. EDGAR. That is all of it, sir. There is another matter which I think we perhaps should have considered, sir. It has been urged by the Patent Law Association. That is to say, that section (g) should be stricken out.

The CHAIRMAN. That was argued here yesterday.

Mr. EDGAR. It was argued here yesterday, sir; so I understand. If only one license was granted it would be a serious question for a number of people who have been in the habit of using diarsenol in the United States for several years and have got accustomed to using it, and who think well of it and have said that it is equal, if not superior to, the original German salvarsan.

Senator FERNALD. Is it precisely the same product?

Mr. EDGAR. It is precisely the same chemical product. It is a fixed chemical, and it is exactly the same. The only question that might

arise is the question of purity. If it is impure it might have harmless impurities or it might have very toxic impurities; or it might be very toxic itself, if the arsenic is any way oxidized. I have no doubt that there will be practical tests provided to be made so that the public will be protected. Of course, it is tested now by the Canadian Government and the British Government. In fact, the British Government accepts the Canadian tests. It has got to be tested biologically for toxicity. I have no doubt some provision of that kind will be made in the license, so that the public will be perfectly protected in any event, no matter how many licenses are granted, because this provision will have to be complied with. As a matter of fact, I do not think there is now any provision made by the United States Government for protecting the public in regard to these products. They come in here to this country and are sold freely without any Government supervision whatever. But we will be glad to have such Government supervision.

The CHAIRMAN. Under our pure food and drug act is there not any examination made of it at all?

Mr. EDGAR. It is a product that is not sold to the general public but is sold for physicians' use only, and I think in that case it does not come within the provisions of the food and drug act.

The CHAIRMAN. What is the price of this drug as sold by a physician, if you do not mind saying?

Mr. EDGAR. I think that the standard dose is 0.6 of a gram, and I am not perfectly certain, but I think that here the price is about $2.50 in fairly large quantities.

The CHAIRMAN. Of the diarsenol?

Mr. EDGAR. Of the diarsenol; yes, sir. I think that it is. Of course, in single tubes it would be higher.

The CHAIRMAN. How much higher?

Mr. EDGAR. Perhaps up as high as $3. I can not remember, offhand. Of course there is a very high duty on it, coming into this country, a duty of 30 per cent, and if the tariff is increased it will be 40 per cent.

The CHAIRMAN. When you manufacture in this country you will not have that duty to pay?

Mr. EDGAR. Yes; we will avoid that duty; and that is an inducement to manufacture here.

The CHAIRMAN. Will that benefit accrue to the poor, suffering Americans who have to use it?

Mr. EDGAR. It may. There is a little difficulty in manufacturing in more than one place, because a great deal of strict personal supervision is necessary in producing this article.

Senator FERNALD. I think the evidence before one committee disclosed the fact that some physicians were charging as much as $30 for a dose of it.

The CHAIRMAN. One hundred dollars was charged; but that was for administering it.

Mr. METZ. It was said that $100 a vial had been charged, by speculators.

Senator VARDAMAN. That was only done in high society I expect.

Mr. EDGAR. We have as a matter of fact made a contract with the Government health authorities at a very much lower price. It comes

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in free of duty, however, so that we can sell it there at a very much lower price.

Senator VARDAMAN. I want to ask you for my own information, is this a German invention?

Mr. EDGAR. Yes, sir; it was invented by the late Dr. Ehrlich, who died a few years ago.

Senator VARDAMAN. And you are manufacturing under the right acquired from them?

Mr. EDGAR. We are manufacturing not by any license from the German patentees but by a license from the Canadian Government who grant licenses just as it is proposed for the American Government to grant licenses under this bill. The owners of the patent are the firm of Meister, Lucius & Brüning and Farbwerke-Hoechst. They are the owners of the German and United States patents.

Senator VARDAMAN. It does not take very many doses to either kill or cure?

Mr. EDGAR. They may cure some patients in 3 doses, and they may take 15 doses, but it is apparently the most effective remedy for syphilis that has yet been found.

The CHAIRMAN. Do I understand that diarsenol is manufactured under the license, which license recognizes the German patent? Does that license recognize the Germans as being the owners of the patents or not?

Mr. EDGAR. Oh, yes, sir; and we pay a royalty of 5 per cent to the Canadian Government.

The CHAIRMAN. You pay to the Canadian Government, which is holding that in trust for the patentees?

Mr. EDGAR. Not necessarily. It may be so, but it may not. It is simply paid as a royalty, to be disposed of after the war as they see fit. Probably it will depend upon what the German Government has done in regard to——

The CHAIRMAN. Then your company is not operating under what it claims to be its original discovery as inventor of the process?

Mr. EDGAR. Oh, no, sir; it is operating under the German patents in Canada, or nearly so, because they have in course of time modified the process described in those patents, improved upon the process, and in fact are getting a better product than they could possibly get under the original patents.

They are operating in a general way under the process described in those patents, but the patent does not describe the method of production in such detail that it would be very easy for anyone to manufacture it, even for an expert chemist. It outlines in a general way the method of production.

The CHAIRMAN. I take it that is a matter that does not specially concern this committee.

Mr. EDGAR. No, sir.

The CHAIRMAN. Are there any other points you wish to bring out?

Mr. EDGAR. There was just that, that in the event of our not obtaining a license, speaking not from our own standpoint, because I understand you have nothing to do with that, but that you are considering the general public, here——

The CHAIRMAN. Yes; surely.

Mr. EDGAR (continuing). And it would be a great hardship to many of the public institutions in this country if they were unable to obtain diarsenol and neodiarsenol by reason of the fact that a license should not be granted to us, and by reason also of the fact that the German firm may be entitled to bring an action or threaten action, which is just the same thing, even during the war.

The CHAIRMAN. And that tendency would be cured, as I take it from your statement, by the amendment you suggest?

Mr. EDGAR. By eliminating paragraph (g).

The CHAIRMAN. By eliminating paragraph (g)?

Mr. EDGAR. Yes; and also by——

The CHAIRMAN. What would be the effect of this addition to it, even if it be not eliminated?

Mr. EDGAR. That addition, I should think, should be in any event, even if we get a license, because there is some doubt—I may be entirely wrong, but there is some doubt—whether the German patentees may not have two alternatives—to sue under the license or to disregard the license and bring a suit for the infringement of patent and secure all benefits under that law.

The CHAIRMAN. It surely is not intended under this to give them that right.

Mr. EDGAR. I do not think it is intended, but I think that is arguable, and it is very easy to put forward any question of that kind. The other point is that if that paragraph (g) was eliminated it would not be a hardship to the German patentees, because after the war they would have the right to bring any action or suit they liked in respect to infringements that had taken place during the war. But this enables them to do what otherwise they could not do—that is to say, make use of the courts of this country while a state of war exists.

The CHAIRMAN. There seems to be a good deal of objection to eliminating section (g). Of course the committee has not passed on that yet.

Mr. EDGAR. Yes.

The CHAIRMAN. I would suggest if you have any words that would correct the trouble you speak of, that you had better let the committee have them.

Senator VARDAMAN. Yes.

Mr. EDGAR. I have no words except those I have suggested, which you have made a note of, and the elimination of paragraph (g).

There is another matter I have noticed in reading through the section, which I think is a clerical error. At the foot of page 19, lines 23 and 24, I think it ought to read, "or to carry on, or cause to be carried on, a process under any patent, or to use any copyrighted matter." The words "to use any," I think should be in there. It makes better sense than the words used.

Mr. WARREN. Those words "or copyright matter" were inserted in the House, and I think the House left out something there.

Mr. EDGAR. Yes; I could not make out what that meant at first, and then I realized that that was a mistake.

The CHAIRMAN. Is there anything else, Mr. Edgar?

Mr. EDGAR. I do not think so.

The CHAIRMAN. We are very much obliged to you. Senator Frelinghuysen, I believe you come next.

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Senator FRELINGHUYSEN. Mr. Chairman, I was going to suggest that we might take up these corrections that we intended to ask for before the committee with Mr. Warren and ascertain if he would approve them.

The CHAIRMAN. It would be entirely agreeable to the committee for you to do that.

Senator FRELINGHUYSEN. Possibly we might make amendments here that would be satisfactory to the companies against whom an injustice is worked in the present form of this act, and therefore it would relieve the committee from hearing the companies that are here to be heard.

The CHAIRMAN. That would be agreeable to us.

Mr. WARREN. The House inserted a clause there that was not in the bill as drafted, to which I have called the attention of the committee in a memorandum, and I have also called attention to some of the inconsistencies brought about by the House amendments; and I think this suggestion would fall right in line.

The CHAIRMAN. That would be agreeable to us if you would just consult together.

Senator FRELINGHUYSEN. I am ready to explain it to the committee now if the committee desires.

The CHAIRMAN. No; we prefer the other course.

Senator FRELINGHUYSEN. I will let you have these amendments, if we arrive at an agreement with Mr. Warren, to-morrow.

The CHAIRMAN. Mr. Metz, do you desire to be heard?

Mr. METZ. Yes; Mr. Chairman.

STATEMENT OF HON. HERMAN A. METZ, IMPORTER AND MANUFACTURER.

Mr. METZ. Section 10 of the trading with the enemy act is what I want to discuss, and I want to follow up the various suggestions just made by the previous speaker with reference to salvarsan. I take a broader view of this situation than simply covering salvarsan, although I am, so to say, "the goat" in this matter, because I control salvarsan and manufacture it and know all about it, while the others have been infringing. However, there has been a great deal of agitation among the medical men of the country asking Congressmen and Senators to abrogate the patents.

The original salvarsan patent and patents relating thereto, and there are quite a number, are held by a German firm, Farbwerke, vormals Meister, Lucius & Bruening, a large chemical firm whom I have represented in this country for 30 years, selling their product exclusively, I and my predecessors. I buy on my own account, not as a commission house, my own firm paying for the goods and selling as I pleased here independently of them.

These patents were to have been transferred. The trade-marks have been transferred. It is customary in all these matters to protect the product by a patent, and that is where the rub comes in with the medical profession. They take an ethical point of view, with which I have no quarrel, that any product relating to health and life should not be patented. The French do not grant patents on such a product.

The CHAIRMAN. They do not?

Mr. METZ. No, sir; it is a legal question. But these medical gentlemen must bear in mind when they claim that physicians do not patent these things that these men are not physicians: they are chemists and manufacturers who make these discoveries. It takes years and years of research to perfect a product of this kind. Then comes the question, when they came to manufacture such a product as this made from toxic materials, that in the making of these products they must have protection, and they must work with the man that invented it, paying him a royalty. In this case, I understand, the royalty was 40 per cent that was paid to Prof. Ehrlich and his backers, the people who put up the money he spent in years of research. This royalty was used for further research in the Speyer house, which is similar to the Rockefeller Institute in this country, and the research laboratory is supported by the profits of the salvarsan largely at this time. These people are entitled to the profits, although the medical profession holds the view that these things should not be patented.

These products are marketed, and they become known under a specific trade name. This is known as "Salvarsan," or "606," as a trade-mark. I also own the trade-mark "606" in this country. It is known as "606" because in making it Prof. Ehrlich has made 606 distinct chemical compounds, and No. 606 was salvarsan, the nontoxic product.

The Diarsenol Co. in Canada have been infringing in this country right along. Their product has come into this country as an infringement since the war, an absolute infringement beyond any question. I have not objected to it because we could not get enough supply. All that we have gotten since the war has been by British permits. I have been allowed to bring things out of Rotterdam by British permit. I have not raised my price on salvarsan but once since the war began, and then only to cover the additional expense involved. It has been charged that I have been arbitrary because I cut off the drug from some. I sold physicians only on prescriptions for patients to prevent speculation. When the war broke out the retail price was $3.50, and after April, 1915, $4.50, after I was held up and had to pay additional freights and war-risk insurance and deliver direct to physicians, and to cover those costs I raised the price then, and I have not raised it since. I have had sufficient supply until about three months ago.

Senator VARDAMAN. You raised the price on individual vials?

Mr. METZ. Yes; on individual vials.

Senator VARDAMAN. To $4.50 a dose.

Mr. METZ. Yes, sir; a dose; for one dose of six-tenths of a gram, or one maximum injection. The idea was that one dose would be a cure. Here is the original salvarsan [producing vial]. It comes in this shape, without label or anything. I have got to repack the vial and furnish all this, and have all that here [indicating on vial]. I have also to do this with the arseno-benzol [indicating other vials].

Senator VARDAMAN. That is the injection?

Mr. METZ. Yes. You inject that usually into the veins of the patient. This is the arseno-benzol being made by Dr. Schamberg that all this fuss has been made about [indicating a vial]. That caused all the agitation. I have had to pay 5 marks, 25 pfennigs,

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at the factory in Germany in 100,000 ampule lots, and I have had to pay freight to the seaport and let it lie over there until I procured British permits. The war-risk insurance, involving 10 per cent in many cases, the ocean freight, and there is an import duty of 30 per cent, and then I have had to do this repacking. It takes 30 girls to do this, and I have all my other expenses and my overhead, and then I have to sell it in single ampules at $4.50, charges paid. Why it should be said there is any imposition in that I do not know, and I resent it.

Now, a great deal more could be used at a lower price. In other words, the dispensary cases and hospital patients who need it could get it if the price was lower, and there are many poor devils that ought to have it who can not get it because the funds of the hospital are not available. The Government buys a great deal. Those cases, as the gentleman from Canada has said, are many, and the use could be extended ten times if it was made available for those cases at the hospitals, but it could not be done with the cost and duty on the imported product.

Senator VARDAMAN. Can not that be manufactured here to-day?

Mr. METZ. Yes; I am making it to-day. That is what I am getting to now. I want to explain this situation. I have sold this only to physicians. They have come to me with tears in their eyes stating that a patient was suffering, and gotten it, and then they have gone around the corner and sold it to some peddler, and that peddler would sell it to South America at $25 or more an ampule. I have had cases where a doctor ordered much more than he was using. I know about how much a man uses, as I have a record of each one. If a man used it properly I gave it to him as long as my stock lasted. Then the cry came that I had been arbitrary. I arranged to send them Dr. Schamberg's product. That has been available. He was working in connection with the Widener Foundation. That is the stuff here [indicating vial].

The CHAIRMAN. Is this the same [indicating another sample]?

Mr. METZ. They are all chemically the same product. These are all chemically di-oxy-di-amino, arseno-benzol, di-hydrochlorid. They are not the same physically. The people do not want to use that [indicating arseno-benzol] if they can get this. They have a right to get this [indicating salvarsan].

I had no right to make this; it would have been an infringement; but when the war started, early in 1915, I took up the question of manufacturing here. I did not interfere with the importation of the French product or with the diarsenol of Canada, and now the diarsenol and the French stuff comes in. That is arseno-benzol, made in Philadelphia [indicating]. Then they started the manufacture in Canada. This was quite proper, because unless the patentee had started to manufacture in Canada within a certain time the patent would have lapsed. They built a plant and began selling through druggists in Canada. Doctors bought direct. A great amount was smuggled and came across in pockets. I do not charge that the diarsenol people knew that. A great deal of a counterfeit product came in that contains nothing but common salt [indicating another vial]. A man would die if he had that pumped into him. We found through the Board of Health of New York a large amount of this

fake stuff bearing our labels. If a doctor used this stuff and killed a man he would not say a word—that salvarsan killed him. So, in the interests of humanity, I did not bring any suit or stop anyone from selling substitutes.

I went over to Germany toward the end of 1914 and the beginning of 1915 and took up this question of transferring the patents. They had to consult with Prof. Ehrlich and others. It was finally agreed that the patents should be transferred so that I could hold them. I had our attorney some years before bring one suit against an infringer who bought the genuine German product and sold it in this country from Canada. I sued and enforced my sole rights in the patent against him. That was in 1913; but since the war I have not done anything about it that would prevent the importation or the use of substitutes for this product.

Now comes the peculiar situation. After having received hundreds of letters from physicians praising my stand and actions in regard to salvarsan, a propoganda is started to abrogate the patent, and everyone write to his Congressman and Senator about the iniquity of having this patent monopoly go on. Now, I concede, for the sake of argument, as I did before the Senate Patent Committee, that you could take gold dust and put eight grams in here for 50 cents [indicating vial], and a man working on a "foundation" where he has no salaries or overhead expenses to consider, can probably make this for 50 cents; but it costs me nearly 25 cents to put up the Schamberg product after I get it, and put it in the hands of the physician. He charges me $1.50 per ampule. I have to attend to all the medical correspondence and all the other communications, and when you have taken the check of a physician and sent him the goods, many times when it comes to cashing the check there are no funds to meet it. I resell it at $2.50 to physicians, the same price Dr. Schamberg charged when I had no stock previously. I paid Schamberg $1.50 and bought 50,000 ampules under agreement I made. Last November about 200,000 ampules was permitted to come across by the British Government. That was my last shipment from abroad. A large lot has been lying in Copenhagen for over a year. After I got back from Europe I sent my brother over early in 1916, who is a trained chemist, for the patents, to have them finally transferred, and to take up the process in Germany. He stayed four months at the works. They showed him everything; gave him all the details of the entire process, all the tests and everything else, but could not assign the patents, because you could not bring anything printed out of Germany. Then the British would not allow you to pass on neutral boats with anything from Germany. They even took the label off your tooth powder. They went all over you, even went through your shoes. Knowing this, he had to commit to memory and draw his plans on the steamer after he came out. He obtained for me a license to manufacture their products. I can not register it, but I have got the only legal thing I could get after the war started. In the meantime I began putting up a plant. My brother is in charge, together with another chemist from abroad, who was in their plant when they first made it, who, with a physician, attends to the salvarsan and other medical products. This [indicating] has been made in the laboratory, and we are ready now to put it out. To

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avoid testing and certifying my own product I have arranged with Prof. Gries, of Columbia University, to do the biological testing, and unless it is certified by him that the stuff is right, I will not put out a single bottle.

Now, all the other products—the arsenobenzol, diarsenol, and so on—have been infringing on this. They may be all right. I have sold them because I wanted to supply something; but I have letters galore from physicians who do not want this stuff if they can get salvarsan.

The CHAIRMAN. Do not want what stuff?

Mr. METZ. Not any of the infringing products. They want the original salvarsan. I wrote Judge Adamson when the question came up that I was perfectly in accord with his bill. I have no objection to giving nonexclusive licenses. Personally, I probably ought to say I would want an exclusive license for myself, naturally; but I take a broader view of this thing. My plant may burn down. It will take a year to rebuild it. I can have, probably, this year five times the amount needed here and I figure on exporting. They want large quantities in South America. They have had to use the other stuff; but there is this agitation, and I know it is in the minds of some people that Dr. Schamberg be given an exclusive license, and the discussion in the House when the bill was up proves that they have agitated that matter. A letter I had from Congressman Miller, of Wisconsin, who was the man that talked about this matter, proved that that was in the minds of the people there—that they wanted to bar out the real salvarsan. Assuming that this man Schamberg, in Philadelphia, gets an exclusive license, what happens? What is the Federal Trade Commission going to do? If they grant him such a license, what is my plant, without a license, and heretofore a monopoly, worth? He may adopt a trade-mark and do all the business, and handle the French stuff and all the other stuff, but he never can get the real salvarsan. Salvarsan is the stuff made under my supervision from the formula used by the patentee, and is somewhat different in several ways from the product that he makes. Nevertheless, his would then be the real product under the patent. What are they going to guarantee to the man who buys their product, if they get a license? Suppose I went on manufacturing. Ordinarily I have not got to have a license; I have a permit from abroad. I had it before the war. If I had been able to get the papers over here, I could have filed them with the Patent Office and had my transfer or right on record. I believe that can be maintained now. That is a legal question I am not competent to argue. However, I own the trade-mark. My company has got it. It is my name. I can put the stuff out under that name and nobody else can. Nobody else from here has been at the plant abroad and has seen the process except my brother. I will guarantee that none of the other products are entirely identical with salvarsan. They act differently from the salvarsan.

Now, what is my status if Dr. Schamberg, or anyone else, gets an exclusive license? Can I be stopped when I have my investment and my plant and have been doing business for years? But I am not opposed to nonexclusive licenses, because I think it is a broader question than salvarsan, and there may be cases where such a license should be granted. There are many products we have got to have here; and on

many no man could afford to go on and put up a plant without an exclusive license, but in this case I am willing to have a nonexclusive license. I am willing to have these other parties come in, and if I can not supply as cheap and good a product in competition, very well. I am broad enough to take that view.

The CHAIRMAN. You are willing to have this license issued to them?

Mr. METZ. I certainly am.

The CHAIRMAN. But you want it also issued to you?

Mr. METZ. I want no chance of being barred out, as is possible under this proposition, and for that reason I suggest an amendment. This would come in on page 20, line 10, after the words "or to use the copyrighted matter." Now, I bring this up because I have been made the mark on this thing in the propaganda of some physicians as having been arbitrary, and this was all in line with the proposition to abrogate these patents, which they have no authority to do. This proviso that I suggest is as follows (reading):

Provided, however, That no license granted under this act, whether in terms nonexclusive of exclusive, shall bar the right of any American citizen to manufacture, distribute, and sell any composition of matter under a patent owned or controlled by an enemy or ally of enemy, who, prior to the beginning of the war, was manufacturing, distributing, or selling such composition of matter as the exclusive agent of such patentee and as the owner of the American trade-mark by which it was and had been continuously and exclusively designated and known; but that the Federal Trade Commission, on application made and proof shown by such American citizen, shall grant him a license to manufacture, distribute, and sell such composition of matter, under such rules and regulations as said commission may prescribe, and with the view of providing and continuing for the public use the genuine composition of matter under the trade-mark by which it has hitherto been designed and known.

I want to protect the citizen who has been doing business under patent and trade-mark. A trade-mark means large expense for advertising and establishing the trade-mark. It is a right they can not take from you. I suggest this to be amended so that they can not attempt such a proposition, that is all.

The CHAIRMAN. Not to the extent of preventing the issuance of a license to somebody else?

Mr. METZ. No. I am perfectly willing that that should be done. I may not be able to make enough of this thing. I have already offered this product to the Government for $1. I think that I can produce it possibly at a cost of $1 for Government purposes. If it costs me more than that, I will make it up on the retail business.

The CHAIRMAN. How much of that is required annually?

Mr. METZ. They require a great deal of it in the armies abroad. The conditions have been horrible. A man goes out behind the trenches and picks up a dose of syphilis, and he comes back and rubs up against another man in the trenches and infects him. The British medical journals have had many articles on the subject. The Germans have spoken of it. I do not want to be restricted in doing what I have a perfect right to do. After this agitation, I do not want to have pressure brought to bear to have one man, who has been infringing, made the sole licensee. I do not want an exclusive license, because my place may burn down, and then if I could not make it as cheap as others can for the public, I am not going to ask to have an exclusive license; but I suggest that proviso so that I can not be deprived of it, which may be possible, and I think there is an effort

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made to deprive me of that right and a possibility of doing it under the exclusive provision.

The CHAIRMAN. Did you suggest that amendment to the House?

Mr. METZ. No; because that point was not up. It came up after the bill was before the House, during discussion in the House.

There were several other points I would touch on briefly, if you gentlemen will allow me. Now, this proviso of 5 per cent, let me call your attention to this. Five per cent of the cost price may be very small, and there might be hardly anything in it for the original patentee. Let the manufacturer with the license sell at his absolute cost, but a middleman, in whom he is interested, gets a fancy price. Do you not see how he is dodging the 5 per cent proposition? He is to pay 5 per cent of what he gets. He can deprive himself as licensee of profit on the stuff, and then make a big profit outside through another concern which he authorizes as selling agent.

The CHAIRMAN. What amendment would you suggest for that?

Mr. METZ. The bill states "5 per cent of the gross sum received," but do you not see that his gross sales may be at the very minimum, because his selling agent will make up on that. He receives the minimum, but he makes his money when the agent to whom he sells sells the goods to the public, and the public gets no benefit, and he gets the profits.

Senator VARDAMAN. Your idea is to have the Government fix the price here to the consumer?

Mr. METZ. I want to prevent the licensee from doing this with a fake company, or a dummy, and getting all the profit and not paying the tax.

Mr. WARREN. Can you ever get a profit made by the middle man?

Mr. METZ. You can make some condition that the price shall not be less than a certain amount. It ought to be done in justice to the patentee, unless you want to confiscate all he has got, and that is not the object.

There is one other point, about testing medicinal products. There was a provision in the original bill that the Public Health Service should test these products. These things are so dangerous, so toxic, that there should be a control. The biological laboratory has not got the money, probably, and Gov. Montague told me that he crossed out that provision because he did not want the inevitable wrangling of the different schools of physicians; but there should be some provision which would prevent that. There might be a provision that at the expense of the manufacturer the testing should be done. I want to protect the public by making some proviso that these products shall be tested by some competent authority, and I believe that if the laboratory was to make a charge for such purposes it would be perfectly proper, and that you will have the proper guarantee to the public; and there should be a permit to the seller the same as there is on vaccines and antitoxins of every kind.

The CHAIRMAN. Why does this not come under the regulation of the pure food and drugs act?

Mr. METZ. It is a chemical product; not a toxin. It is quite different. It is a chemical compound purely.

The CHAIRMAN. No chemical compound comes under that act?

Mr. METZ. No chemical compound comes under the food and drugs act, except in interstate commerce. These fakes, I can not do a

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TRADING WITH THE ENEMY.

WEDNESDAY, JULY 25, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled, pursuant to adjournment, at 10 o'clock a. m., in the committee room, Capitol, Senator Joseph E. Ransdell, presiding.

Present: Senators Ransdell (chairman), Vardaman, and Fernald.

Present, also, Hon. Charles Warren, Assistant Attorney General of the United States; Senator Joseph S. Frelinghuysen, of New Jersey; and Mr. Neal Bassett, representing certain American fire insurance companies.

The CHAIRMAN. Are you ready now, Senator Frelinghuysen, to make your statement, or would you gentlemen prefer to go into the matter further before presenting it?

Senator FRELINGHUYSEN. I would like to introduce Mr. Neal Bassett, who is representing certain American fire insurance companies.

The CHAIRMAN. We will be glad to hear Mr. Bassett.

STATEMENT OF MR. NEAL BASSETT, REPRESENTING CERTAIN AMERICAN FIRE INSURANCE COMPANIES.

Mr. BASSETT. This is a matter, gentlemen, with relation to insurances and reinsurances between fire insurance companies of this country, and enemy and ally of the enemey insurance companies that are domiciled in this country, and with neutral companies that are doing business in this country, and that may be doing business within enemy or ally of enemy countries.

There are a great many insurance companies of this country who have treaties or contracts of reinsurance with enemy companies or ally of enemy companies, or with neutral companies referred to. Those treaties or contracts of reinsurance provide that companies of this country may cede or give to those companies by contract a part of the liability assumed as direct insurers of the people of this country. This practice of reinsurance has lasted over a long period of years. There is a very large amount of liability primarily assumed by the American direct writing companies that has been reinsured in these other or reinsurance companies.

Any action taken which would make it impossible for American companies to continue the practice of reinsurance would work not only a great hardship upon the American companies themselves, but would work an equal or greater hardship upon American property owners who are the policyholders of the American companies.

It is our desire not only to safeguard the interests of the American insurance companies, but also through them the interests of the individual policyholders: and those policyholders are domiciled in every section of this country, on farms, in villages, in towns, and in great cities.

The American companies are doing business in every State in the Union. Therefore, they have policyholders in those States, and those policyholders are depending upon them to pay their claims promptly in the event of fire. The American companies, in turn, depend upon recovering the insurances which have been reinsured with other companies. Anything that may be done that would make it impossible for American companies to recover immediately or within a reasonably short-time funds from their reinsurance companies, would work a great hardship upon American companies and through them upon their direct policyholders, in fact a greater hardship than I think we can well make clear here. Let us say, to use an illustration, that a conflagration should occur such as occurred in Baltimore or in San Francisco. The American companies would then be called upon to pay out of their funds losses which occurred in those conflagrations. Should they not be able to immediately receive funds due them from their reinsurance companies, it would put them in a very embarrassing position and would have a very direct effect upon property owners.

Senator VARDAMAN. Let me ask you a question right there.

Mr. BASSETT. Yes.

Senator VARDAMAN. Have you any reinsurance in Germany or with the enemy countries?

Mr. BASSETT. There are in this country a number of companies of enemy or ally of enemy countries. I will have to look at the tables to refresh my memory as to the number of them. I can not give you that without reference.

Mr. WARREN. There are possibly eight or nine companies?

Mr. BASSETT. I think there are possibly more than that, Mr. Warren. It will take but a second for me to find out. [After consulting tables.] There are eight or nine enemy companies or ally of enemy companies that are doing a reinsurance business in this country.

Senator FERNALD. How extensive is that?

Mr. BASSETT. Their annual premium incomes are approximately $20,000,000 a year.

Senator FERNALD. That is the total?

Mr. BASSETT. That is the total of the annual premium incomes. That, of course does not represent the liability which they have assumed for these direct companies. Neither does it represent the amount of premiums in force. Bear in mind that these reinsurances extend over a period of five years; as an illustration, companies reinsured business five years ago, much of which has not expired. In addition, they have reinsured business in each of the succeeding years.

The CHAIRMAN. Could you tell us about how much insurance that would mean—that $20,000,000 of premiums—approximately?

Mr. BASSETT. That would mean approximately $2,000,000,000.

The CHAIRMAN. Two billion dollars of insurance?

Mr. BASSETT. Yes; of insurance liability.

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Senator FERNALD. Have you had any losses during the past four months on this reinsurance?

Mr. BASSETT. We have them every day.

Senator FERNALD. What has been done in those cases?

Mr. BASSETT. Those losses have been paid in the ordinary course of business.

Mr. WARREN. Under the President's proclamation authorizing it temporarily.

Mr. BASSETT. Yes.

The CHAIRMAN. Is that reinsurance business that you are speaking of, or do any of these nine companies do a direct business in this country?

Mr. BASSETT. The companies that I have mentioned do a reinsurance business.

The CHAIRMAN. And the American companies place a portion of their risks with these other companies?

Mr. BASSETT. Yes. In addition to that there are a certain number of companies doing a direct business. There are, I think, from four to six of those companies that are doing a direct business with the people of the country.

In addition to the above there are a number of companies domiciled in neutral countries or belligerent countries friendly to the United States who are doing business in this country and are possibly doing business with the enemy countries. In other words, they have branches in the United States, and they may have branches in Germany.

The CHAIRMAN. How about these nine companies that you speak of, are they all represented by branches in this country which are practically independent companies?

Mr. BASSETT. They are all represented by branches in this country, and the funds of those branches are in the hands of United States trustees. Those trustees are subject to the laws of the various States in which those companies are locally domiciled. The funds in this country are in the hands of those trustees except what would be called current funds. Those current funds are subject to check, except that since war has been declared the States in which those companies are domiciled have promulgated rules that no funds of any kind shall be sent out of this country, and my recollection is that the President's proclamation of April 6, 1917, provided that also.

The CHAIRMAN. I was just going to ask if it would be practical for those reinsuring agencies of foreign countries to conduct business in this country without remitting to the parent companies the earnings which they were making?

Mr. BASSETT. It is not only practicable, but that is the course which is being pursued to-day. Not a dollar of money can leave the country to go abroad, under the President's proclamation and under the provisions required by the various State departments who have control over these various companies.

Senator FERNALD. Do I understand that they are paying these reinsurances and are not sending them any funds?

Mr. BASSETT. No, sir; we are paying the premiums as they become due, monthly.

Senator FERNALD. Yes; that is, we are sending them the funds?

Mr. BASSETT. We are sending funds to the branches in this country. No money is going out of the country.

Senator VARDAMAN. Really, you are not having any business relations with the foreign countries at all now, except with their representatives here?

Mr. BASSETT. That is true.

Senator VARDAMAN. And the restrictions around those representatives here are such that they can not remit their earnings to the foreign countries.

Mr. BASSETT. That is correct.

The CHAIRMAN. They can remit neither their moneys, nor the funds remaining which are held in trust for your benefit.

Senator VARDAMAN. What legislation do you want in regard to this?

Mr. BASSETT. We desire that in the event it becomes in the future necessary to cancel the licenses of any of these companies that we shall have the ability to immediately recover back our funds and collect debts due us instead of waiting until the termination of the war. We desire that those companies may be permitted to continue to do their business in this country, believing that by so doing they are not harming the country, but rather are aiding the country, because by using the funds which they have over here in granting reinsurances to American companies the latter are enabled to take care of the business or commerce of this country, and the country itself is benefited instead of hurt.

The CHAIRMAN. Is that objected to by any of the departments of the Government, so far as you know?

Mr. BASSETT. No: not now. The situation as it appeared to us, until we had a conference with Mr. Warren, was somewhat confused. The President issued a proclamation providing that companies referred to could continue to do business in this country subject to certain regulations. Subsequently a certain provision was placed in the act, commencing at section 2, page 2, line 6.

Mr. WARREN. You mean it was placed in the act by the House?

Mr. BASSETT. Yes.

Senator FERNALD. That is, in House bill 4960?

Mr. BASSETT. Yes. This is the provision (reading):

Provided, That nothing in this act shall impair or affect the President's proclamation of April 6, 1917, or any amendment, modification, or revocation thereof, in relation to the branches of enemy or ally of enemy insurance companies in the United States when such branches are under the management of citizens of the United States, and such branches, and the managers and trustees thereof, shall be subject to license by the Secretary of Commerce regulating the business thereof and the control and disposition of the funds thereof, subject to rules and regulations prescribed by the Secretary of Commerce, with the approval of the President.

We can not see the wisdom or the necessity of that provision in the bill, which was read into it by the House. It would adversely affect a large number of American companies and a very large volume of business which they have reinsured with these reinsurance companies.

The CHAIRMAN. Just what would be the evil effect of that? Describe it, will you, because we will have to thrash this out with the house, probably, in conference; that is, if we decide, I mean, to strike it out?

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Mr. BASSETT. In the first place—and I will ask Mr. Warren to correct me if I am wrong about that—the bill itself provides for the regulation of these companies by the Secretary of Commerce; and putting in this provision that nothing shall interfere with the President's proclamation, and then providing thereafter "subject to license by the Secretary of Commerce," is reading something into the bill which seems to be totally unnecessary, as it seems to be already taken care of in the bill.

Senator FERNALD. That would seem to be true.

Mr. BASSETT. Then, in addition to that, it provides as follows: "When such branches are under the management of citizens of the United States." It so happens that a very important reinsurance company is under the management of a German citizen. To the best of our knowledge and belief he is conducting his business properly. He has no means of transmitting these funds abroad, and to pick out and exclude a certain class of companies without the opportunity of a hearing before the Secretary of Commerce, so that he may determine whether or not these companies should be licensed, seems to us to be a distinction which is not only unnecessary but harmful.

The CHAIRMAN. You think that the license clause would enable the Secretary to protect every right of America which should be protected without these words?

Mr. BASSETT. Yes; without those words.

Senator VARDAMAN. Then, if I understand you correctly, these words are mere surplusage?

Mr. BASSETT. They are surplusage.

Senator VARDAMAN. Do they complicate that matter in any way, other than that it is a repetition of the provision conferring this power upon the Secretary of Commerce?

Mr. BASSETT. No.

Senator VARDAMAN. The only objection, then, to it is that it is just surplusage?

Mr. BASSETT. No; it goes further than that, Senator. It provides that certain companies may not do business at all if they are under the management of German citizens. That would, immediately upon this bill becoming a law, stop the operation of those companies. It would not give the Secretary of Commerce an opportunity to inquire and determine in regard to them.

The CHAIRMAN. Or it would force those companies to change their management?

Mr. BASSETT. Yes; if under the law they could then do so.

The CHAIRMAN. You say there is one very powerful company that is now under the management of a German citizen?

Mr. BASSETT. Yes.

The CHAIRMAN. And there may be others?

Mr. BASSETT. I know of one, and I think there are others. Am I correct about that, Mr. Warren?

Mr. WARREN. Yes.

Senator VARDAMAN. What would you think of the suggestion that the Secretary of Commerce might be given discretion to permit a German citizen to assist in the management of a company, if in his judgment the public interest would not be interfered with?

Mr. BASSETT. I would think, Senator, that the removal of the words that I have quoted from that section of the clause would leave that

entirely within the hands of the Secretary of Commerce. That is correct, is it not, Mr. Warren?

Mr. WARREN. Yes.

Mr. BASSETT. So that not only is a part of this language surplusage, but there is a part that goes beyond being surplusage and absolutely takes away from the Secretary of Commerce any right of action with reference to a certain kind of company.

Senator VARDAMAN. I think that the precaution ought to be taken to permit the Secretary of Commerce to determine that question. It would be unfortunate, it strikes me, to deny to the company the services of a well-behaved German citizen who was connected with it unless there is some reason, and it seems to me that that discretion ought to be vested in the Secretary of Commerce in order to avoid the possibility of doing harm. What do you think about that, Mr. Warren?

The CHAIRMAN. I think there is no question that the Secretary ought to have the discretion to do that.

Mr. WARREN. I think I can clear that up after a while.

Senator VARDAMAN. Very well.

The CHAIRMAN. Will you proceed, Mr. Bassett?

Mr. BASSETT. We think the Secretary of Commerce should have the aid of an advisory board, composed of competent officers of American fire insurance companies, to assist him in reaching his conclusions, both as to licenses and such regulations as may be necessary, and we think the law should so provide. This would aid the Secretary and protect the American companies through furnishing him expert advice. I have no doubt such officers would give their services to the country.

We should like to have the bill so drawn as to make it possible for American companies or American citizens, if they are doing a direct business, to recover from companies of enemy or ally of enemy or neutral countries, the money that would be due us if they should fail to be licensed. In other words, we would like, if the Secretary of Commerce under his powers prohibits any particular company from doing business in this country, to have the money due us paid to us, immediately; again, in other words, such funds as they might owe us should not be impounded but paid to us. To impound them would work a hardship upon us and could do no possible harm to the enemy.

Senator VARDAMAN. But have they sufficient funds in the United States to meet all of their liabilities?

Mr. BASSETT. They have sufficient funds in the United States to meet all of their liabilities, except in the event of extraordinary conflagrations such as occurred at San Francisco and Baltimore.

Senator VARDAMAN. If they did not have, could an act of Congress empower you to get it?

Mr. BASSETT. No; but an act of Congress could empower us to recover back from them whatever funds they might have that might be due us in the ordinary course of business, without having to bring suit or without having to await the termination of the war to get it.

Mr. WARREN. You mean if the funds had been taken over by the custodian?

Mr. BASSETT. Yes.

Mr. WARREN. That is provided for in the bill, also.

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Senator VARDAMAN. Of course that ought to be done.

Mr. WARREN. I think it is covered, but Mr. Bassett wants it made a little more specific.

Senator VARDAMAN. I think they ought to have that power.

Mr. WARREN. Yes.

Mr. BASSETT. We would like also, if this bill becomes a law, that before any funds of these companies are impounded they would have the privilege to pay back to us, and we would have the privilege to receive, moneys that might be due us under our contracts with them. As an illustration, if the bill were to become a law to-morrow we would like the privilege of having them pay to us any losses that might occur to-morrow for which they might be responsible to us; any return premiums on business canceled to-morrow for which they might be liable to us; and not to have to go through the possibly tortuous proceedings before the Secretary of Commerce, or court proceedings.

Senator VARDAMAN. Have they that power now?

Mr BASSETT. They have that power now under the President's proclamation. We would also like the provisions of the bill to enable us to have a hearing before the Secretary of Commerce after he has impounded, should he impound, any of the funds of these companies, and we would like to have him have authority to pay back to us any of the moneys which may be due us.

Senator VARDAMAN. Do you think that would be better than adjudicating that matter in the courts? Do you want to vest him with judicial powers in the matter?

Mr. BASSETT. We think it would be much better than court action, Senator, because these moneys would be due us under contracts that were in existence prior to the passage of the bill, and many of them prior to the war. As an illustration, an American company reinsured with a certain company certain policies prior to the commencement of the war. A very large loss occurs, as for instance happened in Atlanta, Ga., recently. It would take some time for the American company to adjust losses and find out the exact amount that it owed its policyholders, and the exact amount that the life insurance company would owe it. But when determined we can see no reason why we should be put to the expense and great trouble and delay of a suit to recover money manifestly due us.

Senator VARDAMAN. Suppose the other party to the controversy should be dissatisfied with the decision of the Secretary of Commerce, would not the courts listen to that, or should not the courts be given jurisdiction of those cases?

Mr. BASSETT. In the event that the Secretary considers the claim doubtful—in the event that he is unable to have a clear conception or understanding of what is due—we think it should go to the courts.

Senator VARDAMAN. I think we ought to, as nearly as possible, provide justice, and not shut off any of the avenues or deny parties to the controversy any of the ordinary tribunals for determining that.

Mr. BASSETT. We would have no objection if the reinsurers disputed the claim in good faith.

Senator FRELINGHUYSEN. I think Mr. Bassett might explain that that is endeavoring to continue the ordinary routine of business between these two companies that have a contract. If you do not

compel the company to sue whenever there is a loss it will save a great deal of embarrassment, unless there is some dispute as to the loss claimed.

Then, possibly, if the reinsuring company wishes to contest its claim, there might be some provision made; but the ordinary routine of the business should be allowed to be carried on, because if you attempt to adjudicate in the courts the thousands of losses claimed, you are going to subject the American company to great losses.

Senator VARDAMAN. The idea is not to compel anybody to do that, if they agree among themselves. Of course, we do not want to put any impediment in the way of amicable settlement. The idea in my mind was that if there should be a difference, those tribunals which are usually resorted to to determine those questions ought not to be denied to them.

The CHAIRMAN. As a matter of course, Senator, we would not interfere with the ordinary processes of the courts, and all that Mr. Bassett is trying to get at is that controversies which, if the law were not in existence, could be readily adjusted between these people, could be adjusted through the medium of the Secretary of Commerce.

Mr. BASSETT. That is correct, Senator.

I have here some provisions which we thought it would be wise to put in the bill, and I think maybe if I should read these provisions, while possibly they may be simplified, yet they would cover the point we have in mind.

The CHAIRMAN. All right; go ahead.

Mr. BASSETT (reading):

Provided, That if any money, securities, or other property belonging to an enemy or ally of the enemy insurance company be delivered to the alien property custodian or deposited in the Treasury of the United States under the provision of this act, and any insurance company not an enemy or ally of the enemy country shall claim by reason of the terms of a written contract or agreement existing prior to the war, any right, title, or interest in such money, securities, or other property, or shall be a creditor of such enemy or ally of the enemy company, such insurance company may file its claim for its right, title, or interest in such property with the alien property custodian, if such money, securities, or other property is in his custody, or with the Treasurer of the United States if such money, securities, or other property is in his custody, and if said claim is admitted by such enemy or ally of the enemy insurance company to be justly due said claimant, then the alien property custodian or Treasurer of the United States, as the case may be, shall within sixty days from the date such claim is filed deliver to such claimant the money, securities, or other property claimed, or pay such claim out of the money or the proceeds of the securities or other property.

That covers Senator Vardaman's point, because it is an admitted claim [continuing reading]:

Provided further, That the alien-property custodian or Treasurer of the United States, as the case may be, if he deems such course necessary, may in person, or by deputy by him appointed, demand and hear evidence in support of the bona fides of such claim, including the filing of a copy of the written contract or agreement under the terms of which said claim is made, in which event he may withhold judgment and delivery of the money, securities, or other property claimed for an additional thirty days from the date such claim is filed. And the alien-property custodian or the Treasurer of the United States, as the case may be, may decline to deliver the money, securities, or other property claimed if it should, upon the hearing hereinbefore provided for, appear to him that the bona fides of such claim are doubtful.

And provided further, That if any money, securities, or other property belonging to an enemy or ally of the enemy insurance company be delivered to

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the alien-property custodian or deposited in the Treasury of the United States under the provisions of this act and any insurance company not an enemy or ally of the enemy company shall claim any right, title, or interest in such money, securities, or other property, or shall be a creditor of such enemy or ally of the enemy company, and the alien-property custodian or Treasurer of the United States, as the case may be, doubts the bona fides of such claim or fails to act upon such claim within ninety days from date it is filed then such insurance company may institute suit in equity in the district court of the United States for any district in which either the principal office or a branch office of such company is located or in the Court of Claims for the purpose of establishing its right, title, or interest as creditor or otherwise in such money, securities, or other property and procuring a decree thereon; and such court shall thereupon, on proper showing, direct that the money, securities, or other property in the custody of the alien-property custodian or in the Treasury of the United States, to which such company shows itself to be thus entitled, be delivered within sixty days from the decision of such court to such company, or its said claim paid out of the proceeds thereof, and such case may be heard and determined and the money, securities, or other property delivered, or its claim paid out of the proceeds thereof, before the end of the war. The alien-property custodian or the Treasurer of the United States, as the case may be, shall be made party defendant to such suit and given such notice thereof as the court may by order direct.

The fact that the alien property custodian or Treasurer of the United States, as the case may be, has failed to approve or doubts the bona fides of any claim before suit is brought as herein provided, shall not prejudice said claim before the court in which suit is brought; and such disapproval or failure shall not be admissible evidence before such court.

And provided further, That nothing in this act shall affect the validity of insurances or reinsurances effected prior to this act becoming a law by any insurance company not an enemy or ally of the enemy company, with an enemy or ally of the enemy insurance company, and all such insurance or reinsurances may, at the option of any insurance company interested and not an enemy or ally of the enemy company, be canceled at any time within seven calendar months from the date this act becomes a law, as to any such company not licensed by the Secretary of Commerce and within seven calendar months from date of such cancellation, as to any such company whose license is canceled, notwithstanding anything in contracts between companies not enemy or ally of the enemy companies, and enemy or ally of the enemy companies.

That means that we shall have the privilege of these past reinsurances that we have effected, remaining in force until we can have sufficient time to cancel them and protect ourselves [continuing reading]:

Nothing in this act shall prevent an enemy or ally of the enemy insurance company from paying or delivering to its claimants under contracts existing at the time this act becomes effective, and resident in the United States, money, securities, or other property that is due said claimants, and such payment or deliveries may be made at any time they are due under said contracts prior to delivery to the alien property custodian or Treasurer of the United States, as the case may be, of the money, securities, or other property of an enemy or ally of the enemy company.

Senator VARDAMAN. Where does that amendment come in?

Mr. WARREN. It would be difficult to say. There are many portions of the bill they can put this thing in. Many of the matters suggested by Mr. Bassett can be covered by general clauses. We tried not to cumber up the bill by making special provisions as to special classes of business, and that is the theory upon which the bill is drawn; and some of Mr. Bassett's ideas I think are already covered, and others, if they are not, I think I can agree with; but I could not

agree to put them in the same language that he suggests, because he addresses himself peculiarly to insurance companies.

The CHAIRMAN. I would suggest this, Mr. Bassett, that you and Mr. Warren might get together and see if you can not put this in shape, you going ahead now and making such explanations as you wish; and if you and Mr. Warren can agree upon it, I have no doubt that the committee would concur in the form which you suggest.

Senator VARDAMAN. Mr. Bassett will not be here when we have our executive meeting, after this testimony is taken. I would suggest, for my own enlightenment, that if it is entirely convenient to Mr. Warren, when we come to have an executive meeting we invite Mr. Warren to sit with us.

The CHAIRMAN. That is a fine suggestion. I had intended to do that.

Senator VARDAMAN. And then out of all this accumulated evidence we may be able to pick out these little differences and harmonize them, with the redrafting of certain sections.

Mr. WARREN. There is very little difference between us, seemingly; there is only the clarifying of certain things.

The CHAIRMAN. Go ahead and make such statement as you wish now, Mr. Bassett. It will help us when we meet in executive session.

Mr. BASSETT. I think that what we have said covers the essence of what we desire. We are quite in accord with Mr. Warren's desire not to cumber the bill. If we get the essence we have no desire to dictate the verbiage.

Senator VARDAMAN. So far as I am concerned, I desire to do justice to all parties.

Senator FERNALD. A few minutes ago you were speaking of the funds held in this country. Are there sufficient funds to last for any length of time, with the usual losses?

Mr. BASSETT. Yes, sir; we believe that the funds in this country of the best of these companies would be amply sufficient to protect.

Senator FERNALD. I meant of all of them. I realize that some of them have sufficient funds; but have they all sufficient funds, that you know?

Mr. BASSETT. I could not answer that question, because I would not like to put myself in the position of speaking of what I am not certain of.

Senator FRELINGHUYSEN. They are required by law to have certain reserves.

Mr. BASSETT. They are safeguarded by the laws of the various States in which they are doing business; and presumably they have sufficient funds.

The CHAIRMAN. You spoke of nine foreign companies that were doing the reinsuring business here and four or five that were doing the direct insurance. I suppose those four or five are represented by agencies in this country, the same as those that are doing a reinsuring business.

Mr. BASSETT. They are represented more broadly than the reinsurance companies. A reinsurance company has one office in this country, and it has contracts with insurance companies that write direct business. A direct company has agencies, as many as it can get, over the entire United States.

The CHAIRMAN. Are those agencies in position to go ahead with their business without being obliged to remit their earnings to the parent company?

Mr. BASSETT. They are obliged to remit those earnings to the head United States office, wherever that may be, and as previously explained, the head United States office is under the control, so far as financial matters are concerned, of trustees in this country.

The CHAIRMAN. There is no necessary connection, then, during the period of war between these companies in the United States and the parent companies in alien lands?

Mr. BASSETT. That is correct.

The CHAIRMAN. The committee will be pleased to hear Senator Frelinghuysen.

STATEMENT OF HON. JOSEPH S. FRELINGHUYSEN, UNITED STATES SENATOR FROM THE STATE OF NEW JERSEY.

Senator FRELINGHUYSEN. I might enlighten the committee further in regard to that. There are four German companies transacting a general agency business in the United States, where the policy is issued direct to the insured through agents. They transact $6,500,000 in premiums of business. Of the reinsurance companies there are seven. These companies transact their business entirely as reinsurance of American companies without issuing direct policies. That business amounts to $17,000,000 a year.

There are approximately $350,000,000 to $450,000,000 of liabilities which they relieve the American companies from.

There is a grand total of $23,000,000 of business in premiums in this country of business transacted by the German companies.

Senator VARDAMAN. Is that per year?

Senator FRELINGHUYSEN. That is per year; yes.

The CHAIRMAN. That is a total of how much insurance in full?

Senator FRELINGHUYSEN. I would say that that was about $2,300,000,000 worth of liabilities.

The CHAIRMAN. I noticed awhile ago that you said it was about $2,000,000,000, and I was wondering where you got that figure from.

Senator FRELINGHUYSEN. I was wrong in my figuring. All these companies are managed, with the exception of two, by American citizens. The other two are managed by German citizens of great ability. One of those companies is the large Munich reinsurance company that does $7,500,000 of business in premiums, which is managed by a German. It reinsures about 11 American companies. These companies are all safeguarded by the laws of the States, and are controlled by trustees who are American citizens. The funds are in their control and under the supervision of the insurance commissioners of the States.

There is $480,000,000 of fire insurance premiums in the United States, of which the German companies do $23,000,000 and the English companies $79,000,000. The other foreign companies writing direct insurance do $6,000,000 and the foreign companies other than German, reinsurance only, do $45,000,000. There are American companies that are owned by English companies doing $25,000,000. That makes $180,000,000 in the control of foreign countries.

The CHAIRMAN. Out of a total of $480,000,000?

Senator FRELINGHUYSEN. Yes. All other American companies do $300,000,000. That makes $480,000,000 of premiums transacted in this way. This does not include ocean marine insurance, but is fire insurance only—fire, automobile, and inland marine.

Mr. BASSETT. Would it not be most definite to say that that excludes all ocean marine business?

Senator FRELINGHUYSEN. It excludes all ocean marine business. I will file these tables for the information of the committee.

The CHAIRMAN. Let them be printed at this point.

(The tables referred to by Senator Frelinghuysen are here printed in full, as follows:)

Names of English companies doing fire insurance business in United States.

	Gross premiums.
Atlas Assurance Co. (Ltd.), London	$1,627,470
British American Assurance Co., Toronto, Ontario	1,384,128
British Dominions General Insurance Co. (Ltd.), London	67,740
Caledonian Insurance Co., Edinburgh, Scotland	1,947,145
Century Insurance Co. (Ltd.), Edinburgh, Scotland	464,479
Commercial Union Assurance Co. (Ltd.), London	7,944,769
Law Union & Rock Insurance Co. (Ltd.), London	889,281
Liverpool & London & Globe Insurance Co., Liverpool	12,987,636
London Assurance Corporation, London	2,812,239
London & Lancashire Life & General Assurance Association (Ltd.), London	3,815,909
North British & Mercantile Insurance Co., London and Edinburgh	6,611,691
Northern Assurance Co. (Ltd.), London	4,386,607
Norwich Union Fire Insurance Society (Ltd.), Norwich	2,900,309
Palatine Insurance Co. (Ltd.), London	2,662,905
Phoenix Assurance Co. (Ltd.), London	4,197,797
Royal Insurance Co. (Ltd.), Liverpool	10,198,809
Royal Exchange Assurance, London	2,290,259
Scottish Union & National Insurance Co., Edinburgh, Scotland	4,089,296
State Assurance Co. (Ltd.), Liverpool	331,937
Sun Insurance Office, London	3,680,165
Union Assurance Society (Ltd.), London	866,676
Western Assurance Co., Toronto, Ontario	1,890,496
Yorkshire Insurance Co. (Ltd.), York, England	1,082,616
	79,130,359

Business of foreign companies.

	Gross premiums, 1916.
German direct writing companies	$6,459,814
German reinsurance companies	17,164,654
English companies	79,130,359
Other foreign companies, direct writing	6,354,188
Other foreign companies, reinsurance only	45,564,636
American companies owned by English companies	25,620,638
	180,294,289
All other American companies	300,129,121
	480,423,410

American companies owned and controlled by English companies.

	1916 gross premiums.	English company owners.
American Central Insurance Co., St. Louis, Mo.	$5,028,445	Commercial Union Assurance Co. (Ltd.), London.
Caledonian American Insurance Co., New York.	113,081	Caledonian Insurance Co., Edinburgh.
Commercial Union Fire Insurance Co., New York.	910,659	Commercial Union Assurance Co. (Ltd.), London.
Commonwealth Insurance Co., New York....	1,729,597	North British & Mercantile Insurance Co., London and Edinburgh.
Imperial Assurance Co., New York.....	874,405	Phoenix Assurance Co. (Ltd.), London.
Liverpool & London & Globe Insurance Co., New York.	780,957	Liverpool & London & Globe Insurance Co., Liverpool.
Mercantile Insurance Co., America, New York.	1,265,944	North British & Mercantile Insurance Co., London and Edinburgh.
Newark Fire Insurance Co., Newark, N. J....	1,575,057	Royal Insurance Co. (Ltd.), Liverpool.
Orient Insurance Co., Hartford, Conn.....	2,511,133	London & Lancashire Fire Insurance Co., Liverpool.
Pennsylvania Fire Insurance Co., Philadelphia.	4,823,764	North British & Mercantile Insurance Co., London and Edinburgh.
Queen Insurance Co. of America, New York..	5,818,064	Royal Insurance Co. (Ltd.), Liverpool.
Safeguard Insurance Co., New York.....	189,532	London & Lancashire Fire Insurance Co., Liverpool.
	25,620,038	

The CHAIRMAN. Now, gentlemen, are there any other suggestions in regard to this insurance matter?

Senator FRELINGHUYSEN. Mr. Chairman, I understand that at the request of Mr. Bassett representing American companies who reinsure with German companies, the sections of this bill will be submitted to Mr. Warren for redraft.

The CHAIRMAN. That is correct.

Senator FRELINGHUYSEN. I want to thank the committee for their consideration.

Mr. BASSETT. I would like to thank the committee for their very patient hearing.

The CHAIRMAN. If there is nothing further to-day, the committee will adjourn until Friday morning at 10 o'clock.

(Whereupon, at 1.15 o'clock p. m., the subcommittee adjourned until Friday, July 27, 1917, at 10 o'clock a. m.)

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FRIDAY, JULY 27, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled, pursuant to adjournment, at 10 o'clock a. m. in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present, Senators Ransdell, (chairman), Vardaman, and Fernald.

Present also, Hon. Wiilam G. McAdoo, Secretary of the Treasury; Milton C. Elliott, Esq., general counsel, Federal Reserve Board; Mr. F. M. Halstead, Chief of the Division of Customs, Treasury Department; and Hon. Charles Warren, Assistant Attorney General of the United States.

The CHAIRMAN. The committee will first hear Secretary McAdoo.

STATEMENT OF HON. WILLIAM G. McADOO, SECRETARY OF THE TREASURY.

Secretary McADOO. The bill as now drawn gives jurisdiction of all matters comprised in the bill to the Secretary of Commerce; and that, under the general terms of the bill, would also enable him to take jurisdiction of certain matters of finance or certain matters that involve finance. I think that would be extremely unfortunate. There ought to be preserved the distinct jurisdictions of the two departments, as at present. This is more particularly necessary at this time than at any other time in our history.

Senator VARDAMAN. It ought to be preserved at all times, it seems to me.

Secretary McADOO. Yes. The Secretary of Commerce under the bill as it now stands will have authority to make investigations of banks for the purpose of ascertaining whether or not any of their transactions are going to benefit or might benefit an alien enemy, and that would necessitate his creating a separate organization for the examination or investigation of banks for the purpose of running down suspected transactions. As it stands to-day, the national banks are subject to examination by the Comptroller of the Currency, who has a sufficient organization for that purpose, they are subject to examination by the Federal Reserve Board through the Federal reserve banks, and they are also subject to examination by the Commissioner of Internal Revenue for the purpose of verifying their income-tax returns. So they are subject probably to a number of different examinations.

If they happen to be State banks or trust companies which are members of the Federal reserve banks, they are again subject to examination by the State banking department, although in that event perhaps the examination of the Comptroller of the Currency would be omitted. I think that banks have got examinations enough as they now stand, and that any new element of this kind injected into the situation would be distinctly unfortunate, not only because it would necessitate new and untried men being brought into that service who are not familiar with bank examinations and the general transactions of the banks, but it is difficult to separate the domestic transactions wholly from the international transactions—the foreign-exchange transactions. So that the examinations would have to be very thorough in analyzing a transaction, and the new elements brought in might cause considerable confusion and a good deal of dissatisfaction. There are established agencies for that purpose, and it is not necessary to create a new organization. In our examinations of banks we can ascertain these things, and ascertain them with less cost and less friction than anybody else possibly could, so that the existing organization ought to be used for that purpose.

Another thing, gentlemen, that I should like to impress upon you, and that is that these vast financial transactions in which the Government is now engaged, relating to domestic finance as well as to international finance, are going to become increasingly complex and difficult as we go along. The questions of international exchange, which have been occasioning me and the Federal Reserve Board a great deal of thought and study and some concern at times, are involved in all of this business. The question of gold exports and gold imports and the preservation of the country's gold supply we have also given much study. The embargoing of gold is a very serious thing, and if somebody had authority to step into this situation who is not familiar with all the complexities of the increased problems of international relationship, and gave directions or took action that would not jibe with the general policies of the Government a very serious effect upon the international relations and the international credit might be produced. I think it would be very hurtful and confusing.

I have felt that it was essential to define clearly the jurisdiction of the two departments in this bill so that all matters relating to finance should continue to be under the direction of the Secretary of the Treasury. The Secretary can exercise these powers through the Federal Reserve Board.

So far as the jurisdiction of the Secretary of Commerce is concerned, I am perfectly willing that all matters of trade, apart from finance itself, should be under him, and I think that the bill as we have modified it defines that jurisdiction in such a way that there will be no difficulty. As to the jurisdiction of the Department of Commerce over commerce and trade, and all that sort of thing, there is not the slightest objection. It is wise, and it is all right.

There is one difficulty which arises about the custody of enemy's property. It is provided that the Secretary of Commerce may appoint a custodian of alien property. I have not sought to effect that, although it is rather awkward to have it placed there; on the whole, I think it had better remain there, and the Secretary of Commerce have authority to appoint the custodian.

I imagine, however, that that custodian is going to find himself in possession of more money and securities than of any other kind of property, as the result of the administration of this act. The money, of course, would be turned over to the Treasury, as the bill is now drawn, to be invested in Government bonds until the determination of the status, after the war is over.

As to securities, for instance, bonds or stocks or things of that kind, the bill as it now stands, even under the amendments that we propose, leaves custody in the Department of Commerce. I think our amendments might be changed so as to require all such securities—anything relating to financial matters or money—to be turned over to the Treasury Department. I am inclined to think that all such securities should be turned over to the Treasury Department with discretion in the Secretary of the Treasury to sell such securities and invest the funds in Government bonds. But I do not insist on that.

The CHAIRMAN. Could you not state briefly what changes you think should be made in the bill and what jurisdiction should be given to your department and what to the Department of Commerce? You have stated practically what functions under this bill come under the Department of Commerce as it is now drawn.

Secretary McADOO. I am submitting to you a draft of the bill containing the proposed changes or amendments. I was only giving the reasons generally for these amendments.

The CHAIRMAN. Yes; but I can understand better if I have in mind in advance what you are proposing, than by having an explanation of what you propose.

Senator VARDAMAN. If you will pardon the suggestion, will you not take the bill and read the amendments into the record, stating where they should go, so that we may have them before us in the printed hearing?

Secretary McADOO. Yes. I only wanted to give you at the outset an explanation of the fundamentals of the matter, and then I was coming down to the specific amendments.

The CHAIRMAN. Yes, sir; that is all right.

Secretary McADOO. I am going to ask Judge Elliott, as he has drafted the amendments, to present them to you.

The CHAIRMAN. Very well, and then in a running way we can ask you for the explanation of the changes, unless you wanted to go on in a general way and lay down some general principles.

Secretary McADOO. I wanted to give you some general information about the problem.

The CHAIRMAN. If you have not finished that, go ahead.

Secretary McADOO. I may say that in the amendments I have proposed here we have enlarged the powers of the Treasury Department in a way that I think is very necessary in the proper administration of the war.

The CHAIRMAN. May I ask if these amendments have been taken up with the Department of Justice and the Department of Commerce?

Secretary McADOO. They have been taken up with the Department of Justice. I may say, further, that I brought this matter to the attention of the President, yesterday, and he is in entire accord in

principle and policy, and it is with his approval that I am here to suggest these changes in the bill. Mr. Elliott, will you present these amendments?

The CHAIRMAN. Will you proceed, Mr. Elliott?

STATEMENT OF MILTON C. ELLIOTT, ESQ., GENERAL COUNSEL, FEDERAL RESERVE BOARD.

Mr. ELLIOTT. The most important amendment is embraced in a new section, which I have put in as section 18 so as not to confuse it with the others. It reads as follows [reading]:

SEC. 18. That for the purpose of supervising and controlling foreign exchange and the export of gold or silver coin or bullion or of any moneys of the United States and of discovering and preventing violations of section 3 of this act the Secretary of the Treasury is authorized and empowered, under such regulations as he may prescribe, to examine, supervise, and control all dealings in foreign exchange, transfers of credits in any form (other than credits relating solely to transactions to be executed wholly within the United States), and to supervise and control exports of gold or silver coin or bullion or of any moneys of the United States, and at his discretion to require any person interested in such a transaction to furnish complete information relative thereto, including the production of all books of accounts, contracts, letters, papers, or other memoranda in connection therewith in the custody or control of such person either before or after any export or foreign exchange transaction is completed.

The Secretary of the Treasury is hereby authorized in his discretion to exercise the powers herein and hereby conferred upon him through the Federal Reserve Board, and the Federal Reserve Board or its duly accredited agents shall be authorized to exercise all such powers as may be necessary to carry out the purposes of this act.

Any person who shall willfully neglect or refuse to furnish information or books of accounts, contracts, letters, papers, or other memoranda relating to dealings in foreign exchange, transfers of credits, or exports of gold or silver coin or bullion, or of any moneys of the United States as above described, when so requested by the Secretary of the Treasury or by the Federal Reserve Board, or by a duly accredited agent thereof acting under regulations of the Secretary of the Treasury, shall be deemed to have violated the provisions of this act within the meaning of section 15.

Whenever it shall appear to the Secretary of the Treasury that the export of any gold or silver coin or bullion or of any moneys of the United States or the consumation of any pending transaction in foreign exchange may result in a violation of the provisions of this act, he may cause notice to be served on the parties in interest to withhold such shipment or to suspend the consummation of such transaction, and any party failing or refusing to comply with the terms of such notice shall be deemed to have violated the provisions of this act within the meaning of section 15.

That is the fundamental amendment. The others are more or less incidental. They are necessary in order to make this effective. For instance, it is suggested that section 13 be amended by adding a paragraph to this effect [continuing reading]:

The collector of customs shall in each case report to the Secretary of the Treasury the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered directly or indirectly to an enemy or an ally of an enemy.

That is, of course, to give authority to make preliminary investigations. It is further suggested that section 2 be amended. That

section, I may say, defines the meaning of terms used in the act. It is proposed to add this definition [continuing reading]:

The words "bank" or "banks," as used herein, shall be held to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States or of any State of the United States, and private bankers.

If these amendments are adopted, section 3 should be amended so that the opening paragraph will read [reading]:

That it shall be unlawful for any person in the United States, except with the license of the Secretary of Commerce, or for any banks, except with the license of the Secretary of the Treasury—such licenses to be issued by the Secretary of Commerce or the Secretary of the Treasury in the manner hereinafter provided in section 5—

(*a*) To trade, or attempt to trade.

And so on.

As it now stands it puts the power of the issuance of licenses in the Secretary of Commerce. This is simply giving the Secretary of the Treasury the right to issue licenses to banks, and the right to the Secretary of Commerce to issue licenses to all others.

Mr. WARREN. Let me see if I understand that. If a bank—which includes the private banker—wanted to do an act that was forbidden by section 3, he would go to the Secretary of the Treasury for a license?

Mr. ELLIOTT. Yes.

Mr. WARREN. And if any other person wanted to do that thing he would go to the Secretary of Commerce. Is that the idea?

Mr. ELLIOTT. Yes; it is to vest in the Secretary of the Treasury control over the banks as such. Carrying out this idea, section 4, as it now stands, reads [reading]:

SEC. 4. That no enemy or ally of enemy and no partnership of which he is a member or was a member at the beginning of the war shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the Secretary of Commerce.

It is suggested that a clause be added to read:

or if a private banker, except under license of the Secretary of the Treasury.

Senator FERNALD. Will you read that once more, please?

Mr. ELLIOTT. The section I last read?

Senator FERNALD. Yes.

Mr. ELLIOTT. As amended it will read [reading]:

SEC. 4. That no enemy or ally of enemy and no partnership of which he is a member or was a member at the beginning of the war shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the Secretary of Commerce, or if a private banker, except under license of the Secretary of the Treasury.

Senator FERNALD. I see; that is just carrying out the other provision.

Mr. ELLIOTT. Yes. Taking up the next section, section 5, it is suggested that the whole section be changed to read as follows [reading]:

SEC. 5. That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this act in whole or in part so far as

they apply to an ally of enemy, and the Secretary of the Treasury may, under direction of the President, grant licenses under this act, special or general, to any bank, and the Secretary of Commerce may, under direction of the President, grant licenses under this act, special or general, to any other person or class of persons, if it shall appear to the Secretary of the Treasury or to the Secretary of Commerce that such grants will be compatible with the safety of the United States and with the successful prosecution of the war, and the Secretary of the Treasury and the Secretary of Commerce, respectively, may, with the approval of the President, make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of this act.

Section 6, beginning on line 23 on page 8, reads [reading]:

Provided further, That the Secretary of Commerce shall cause a detailed report to be made to Congress on the first day of January of each year, etc.

It is suggested that this should be changed to read [reading]:

Provided further, That the Secretary of the Treasury and the Secretary of Commerce shall cause detailed reports to be made to Congress on the first day of January of each year, etc.

Section 6 provides, among other things, for the appointment of accountants and investigators and other employees, by the Secretary of Commerce. It is suggested that the following proviso be added on page 9 [reading]:

Provided further, That no clerks, investigators, accountants, and other employees selected or appointed as herein provided, shall make an investigation or examination of any bank.

Mr. ELLIOTT. Section 7, subsection (*d*), as it now reads, provides as follows [reading]:

(*d*) No person shall be liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the Secretary of Commerce under the authority of this act.

It is suggested that this section be amended to read [reading]:

(*d*) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the Secretary of the Treasury or the Secretary of Commerce under the authority of this act.

In the same paragraph, in lines 18, 19, and 20, on page 12, the language is [reading]:

The alien-property custodian and such other persons as the Secretary of Commerce may appoint, etc.

It is suggested that this be changed to read [reading]:

The alien property custodian and such other persons as the Secretary of the Treasury or the Secretary of Commerce may appoint, etc.

At the end of section 7 there should be a provision to read as follows [reading]:

That the custodian of enemy property shall transmit to the Secretary of the Treasury all information reported to or ascertained by him whenever such information relates to or affects transactions engaged in by banks, and the Secretary of the Treasury, acting through the Federal Reserve Board or through his duly accredited representatives or appointees, shall have and exercise all powers with reference to the supervision and control of transactions of banks that are vested in the Secretary of Commerce with reference to other persons, firms, or corporations.

That was made necessary because there is one custodian, and the information is reported to him with reference to all stock ownership

and all ownership of property, and that is simply to have him transmit directly to the Secretary of the Treasury all information relating to banks, carrying out the same idea.

With the same end in view, there should be added to section 9, at the end of section 9, on page 18, the following proviso [reading]:

Provided, however, That where any claim filed under authority of this section is made by or on behalf of any bank the powers and duties herein conferred upon the Secretary of Commerce shall be conferred upon and exercised by the Secretary of the Treasury.

That is simply with reference to property that is in the hands of the enemy custodian, and where claims are filed by a third party.

Senator VARDAMAN. Should there not be in this bill a provision that in the event of a conflict of authority between gentlemen the President should designate the one through whom the party should be dealt with?

Mr. WARREN. If I may answer that question, the power that is exercised by either Secretary is with the President, anyhow.

Senator VARDAMAN. That is all right, then.

Secretary McADOO. He would do that anyway. He has the power.

The CHAIRMAN. Will you not summarize just briefly, Judge Elliott, what is the effect of the various amendments you are suggesting to the bill?

Mr. ELLIOTT. Briefly, they are to place under the supervision and control of the Secretary of the Treasury the operations of the bill in so far as they relate to banks, and to leave the supervision and control of the operations of the bill in relation to commerce in the hands of the Secretary of Commerce, in so far as it relates to all other persons, firms, or corporations, the principle of the amendment being that the Secretary of the Treasury, in order to control gold shipments and foreign exchange transactions, shall be permitted in addition to the ordinary investigations that are made now of the banks themselves, to require the production of any books or accounts, or any information that may be necessary to enable him to determine whether such a transaction involves the payment of any money to or intercourse with an enemy of the United States. This is necessary in order to enable him to obtain the necessary preliminary information to carry out the purposes of the amendment.

The other principal change is to direct the collector of customs to report separately any cargoes that contain shipments of gold, in order that the Secretary through these agencies can determine whether they are intended for an enemy or ally of an enemy.

All the other suggested amendments are merely incidental to these two purposes and are to clarify the bill on that point.

The CHAIRMAN. Why do you consider these changes advisable?

Mr. ELLIOTT. To begin with, the information upon which action would ordinarily be based to prevent a foreign exchange transaction with an enemy or shipment of gold to an enemy or ally of an enemy would come through investigations ordinarily made under the supervision of the Secretary of the Treasury or of the Federal Reserve Board.

That is to say, any preliminary information in reference to these matters would be reported either by the examiners of the Federal Reserve Board or by national bank examiners or by the examiners of

the Bureau of Internal Revenue, so that if the bill is left as it stands now the Treasury Department would obtain preliminary information, it would then report this information to the Department of Commerce, and this department would make its independent investigation. If, after making its investigation, it took possession of any property and any part of such property was in the form of money, it would have to turn the money back to the Treasury Department and retain any other property. As the bill now stands the Treasury Department, therefore, which has the more appropriate machinery for controlling gold shipments and foreign exchange transactions, would simply make a preliminary investigation and report the information obtained to an entirely new bureau of the Commerce Department which would have to follow up the investigation by sending its clerks and agencies into the banks to run down these transactions. In many instances the mere fact that an outside agency went into a bank would create a presumption that there was some transaction going on there that did not look as if it was altogether right, and the agents of the Commerce Department would be handicapped in that way, because the mere appearance of its investigators would throw suspicion on that bank. On the other hand, if handled under the Treasury Department, a lot of "leads," as the examiners call them, might be followed up and might not turn out to involve anybody, but all difficulty in the way of creating suspicion would be avoided.

Senator FERNALD. You think there would be much better administration under this definition?

Mr. ELLIOTT. Yes; there would have to be created an entirely new machinery for that work unless it is handled by the Treasury Department directly or through the Federal Reserve Board.

Senator FERNALD. Your suggestions are all intended to facilitate the operation of the bill?

Secretary MCADOO. Yes.

Senator FERNALD. Except for the provisions of the additional section?

Secretary MCADOO. Yes.

The CHAIRMAN. To preserve the jurisdiction separate of each of the two departments?

Secretary MCADOO. One over finance and the other over trade. That is about what it amounts to.

Senator FERNALD. Yes.

Secretary MCADOO. There are two other matters here.

The CHAIRMAN. We will be glad to hear you fully.

Secretary MCADOO. Section 14 provides that $250,000 is appropriated for carrying the act into effect. With these changes it would seem to me that it would not be necessary to appropriate so large a sum of money.

The CHAIRMAN. If you will pardon me, the Secretary of Commerce sent Judge Thurman to me yesterday and suggested that that would not be enough; that it would require at least $350,000.

Secretary MCADOO. I would suggest this in view of the established machinery of the Treasury Department. Of course I could not undertake to speak for the Commerce Department at all; whatever the Secretary of Commerce says about that I would accept at once

as being necessary, but I would say that so far as the Treasury Department is concerned I would not ask that an appropriation of more than $50,000 be made.

The CHAIRMAN. Could you give us an idea about what percentage of this work the Department of Commerce would be relieved of?

Secretary McADOO. I am unable to do so, but I would say that a very large part of this work will be done in the Treasury Department, because, after all, I think you are going to find that it is more financial than anything else. I mean the larger part of this work is going to relate to financial transactions.

Senator VARDAMAN. As to the amount appropriated, Congress is going to be in session continuously, probably.

The CHAIRMAN. It is not well to make the appropriation any larger than is necessary.

Senator VARDAMAN. I think $250,000 is plenty to begin with anyway. I do not suppose you could use that for a good while.

The CHAIRMAN. This, of course, under the bill is what is appropriated for the Department of Commerce alone.

Senator FERNALD. Would you like to have that divided?

Secretary McADOO. I would not like you to cut down the appropriation of the Department of Commerce in any way. I would like you to add $50,000 for the Treasury Department.

Senator VARDAMAN. But we are not creating any additional work are we? We are simply transfering certain parts of the work, that was heretofore contemplated to be done by the Department of Commerce, to you?

Senator FERNALD. I think we ought to cut down the appropriation to the extent that we transfer that work to the Treasury Department, at least.

Senator VARDAMAN. $250,000 would be plenty for that purpose, it seems to me.

Senator FERNALD. Oh, yes.

Senator VARDAMAN. It seems to me, if the Secretary's impression or opinion is correct, that the bulk of this work or the larger part of it, is to be done by his department, and if $50,000 would be sufficient to do that part of it transferred to him, certainly $200,000 would be sufficient for the Secretary of Commerce, if we relieved him of that part transferred to the Treasury Department; but, of course, you have got to appropriate enough money.

Senator FERNALD. Yes.

Senator VARDAMAN. My idea would be not to make it unnecessarily large, because they can not possibly use up $250,000 before Congress meets again in December.

The CHAIRMAN. I was just going to say, if you will pardon me, there, that I do not think we ought to be too close about these things. The Secretary of Commerce says he wants $350,000. We are dealing with enormous transactions involving this great Nation of ours, and its relations with some of the greatest nations on earth, and if the Secretary of Commerce needs $350,000 I think we ought to give it to him.

Secretary McADOO. I wish to repeat that so far as I am concerned I would be concluded, so far as the needs of the Secretary of Com-

merce are concerned, by his own estimates, and I should not speak of that. Whatever he thinks is necessary to carry on the work of his own department I think he ought to have, if you will permit me to say so.

The CHAIRMAN. Yes.

Secretary McADOO. But the reason I have said that it would involve very little expense on the part of the Treasury Department is that we have this machinery, in large part, and all I have to do is to, perhaps, increase my examiners' force to meet these new duties, because there is an enlargement of work here. I would say that $50,000 will be ample for the use of the Treasury Department at this time. If we need more we can come back later.

The CHAIRMAN. If we decide to make the amendments and additions that you suggest, I should say that before determining on the amount we should confer with Secretary Redfield.

Secretary McADOO. Oh, of course.

The CHAIRMAN. Let us go on with the other matters you have.

Secretary McADOO. There is one thing I would say. If it appears in this record that I have said the bulk of these transactions would come under the Treasury Department, I should like to correct it. I meant to say a large part. As to what part, I have, of course, no means of determining yet.

There is one other point, and this I have not discussed with the President. This bill as now drawn has rather an anomalous provision, in section 13, on page 28. Lines 4, 5, 6, and 7 I particularly have in view. It is provided here that [reading]—

> the collector of customs for the district in which such vessel is located is hereby authorized and empowered, subject to review by the Secretary of Commerce, to refuse clearance to any such vessel, domestic or foreign.

I do not want to revive or revitalize a controversy that has existed between the two departments ever since the Department of Commerce was organized, but I do think it is important for administrative purposes that there shall be a correction in the bill; that there should be a change in the bill about that. Collectors of customs are, of course, under the Treasury Department, and the Secretary of Commerce under existing law undertakes to give instructions direct to collectors of customs without transmitting them through the Secretary of the Treasury.

It has always been an extremely unsatisfactory arrangement and has led, I think, to some inefficiency in administration because the employees of one department who receive independent instructions from another department are never quite certain that the instructions ought always to be obeyed, and they frequently refer to the Secretary of the Treasury to know whether they should carry out those instructions; and then it is not always possible for the Secretary of Commerce to know whether the instructions he has given are fitting into the general instructions that the collectors of customs are receiving from the Treasury Department, and, while I want to cooperate in the most effective possible way with the Secretary of Commerce, as with everybody else, at the same time I think that no man can serve two masters effectively. I think any instructions that the Secretary of Commerce gives to the collectors of customs should be transmitted through the head of the Treasury

Department and then there will be no difficulty about it. I may give an illustration.

Since the war began we have been checking up passports in connection with the Secretary of State. The matter I do not believe concerns the Department of Commerce, but some instructions were issued, either formally or informally, to the collectors of customs about passports by the Secretary of Commerce. Now, I think that in a case of that sort, even if the Secretary of Commerce has the authority, the direction should proceed through the head of the department concerned, so that he may compel the employees of that department to enforce those orders properly. You can understand this also, gentlemen, that if a collector of customs gets an instruction from the Department of Commerce independently of the Secretary of the Treasury he naturally feels, "Well, of course, I will execute this order so long as it does not interfere with my other duties, but I owe a first duty, of course, to my own department," and if you jack him up about his failure to enforce the orders of another department given direct in that fashion he will excuse himself by saying, "Well, I was so busy with the work of the Treasury Department that I did not have time to get to this."

Now, if that order goes to him from the head of his own department, it proceeds pari passu with every other order he gets from his own department; so that merely for good administration and for the purpose of avoiding conflict, I have felt that we ought to make a slight change in that section, and I would add to section 13 the following words [reading]:

Provided, That all instructions to collectors of customs or other customs officers in the enforcement of the provisions of this act or other provisions of law shall be issued by the Secretary of the Treasury.

That is what we do between the departments with respect to every other thing. If one department wants something done in another department, it proceeds through the head of the department, of course.

The CHAIRMAN. I imagine there is no friction between the two departments in things of that kind?

Secretary McADOO. This has caused friction in some cases.

The CHAIRMAN. I mean, there is no friction if you go to the head of the department and ask that a thing be done?

Secertary McADOO. Not at all; if we can agree that it ought to be done.

The CHAIRMAN. Exactly.

Secretary McADOO. I merely want to get rid of a controversy that arose between the departments years ago, and that grew out of the organic law, before Mr. Redfield or myself came in, because of the issuance of orders by the Department of Commerce direct to collectors of customs instead of through the Secretary of the Treasury, and which has always led to some friction, not between the heads of the departments so much as between subordinates. I am anxious to get rid of that. We shall get the results, if this is done, in the quickest way, and I think in the most effective way.

Now, Mr. Halstead, have you anything to say on that?

Mr. HALSTEAD. I will say that sometimes the Department of Commerce now requests us to issue instructions. They have various bureaus over in that department. Some of these bureaus always ask us to issue instructions and some do not. Even those other bureaus do not seem to have a uniform rule; it seems to depend upon who, exactly, is there. That causes considerable confusion. Only yesterday our collector of customs at Galveston, having been instructed to issue registers of vessels, refused to do so until he was instructed by the Secretary of the Treasury. That might have been a very important matter. Collectors of customs do a great many things besides the collection of money. Since the war we have been looking after the passports of everybody that went abroad, and we have taken up the passports of incoming persons. Under this export license provision the collectors are instructed to see that every shipper has a license.

Now, the Department of Commerce sends over requests that license be issued. Other bureaus issue instructions with regard to the clearing of vessels, and there is a possibility of friction there, because our collectors do not understand the instructions, or do not know who it is who signed the instructions, or they do not know how to follow them out; or they might not do so. For the sake of efficiency they ought to get all their instructions from one head, just as a regiment of soldiers gets its instructions from its head and not from divers persons.

Secretary McADOO. It would promote efficiency in the work to have the thing proceed in the regular and orderly way. That is the very purpose in the amendment I have suggested.

The CHAIRMAN. Would there be any reasonable objection that the Secretary of Commerce could urge to this change you suggest?

Secretary McADOO. I do not know of any. The Commerce Department has always stood very strongly on that privilege of instructing collectors of customs direct. I do not know why they are so insistent upon it, because I think it would really promote efficiency and cooperation if they all proceeded through the head of the department. Why, just assume that I was giving instructions to the force of the Attorney General or to the force of the Postmaster General or that of the Department of Commerce without proceeding through the heads of those departments, you can see the confusion that would arise out of it and the difficulty that would come from it. It is merely for good organization.

The CHAIRMAN. The way your amendment is suggested, Mr. Secretary, I presume your department in carrying out the proper requests of the Department of Commerce would be merely performing an administrative function? The discretion would lie entirely or almost entirely with the Department of Commerce?

Secretary McADOO. It would lie with them.

The CHAIRMAN. And you would simply comply with their requests and issue the instructions when they requested them?

Secretary McADOO. Certainly. We do it now frequently, and are glad to do it. The value of proceeding through the head of a department is that the order of the head of the department has unquestioned authority, and it procures instantaneous action. They do not have to telegraph or write and ask if the instructions of the Secre-

tary of Commerce should be carried out, or ask for explanations about it—that is unless the order as transmitted by the Secretary of the Treasury was not clear, and then they might ask for explanation. Those are the only points, gentlemen, that I have in my mind.

Mr. WARREN. You have made that general law, have you not, and not applicable particularly to this statute?

Secretary McADOO. Yes; I made it general, to clear up the question of issuing instructions about anything to collectors of customs.

Mr. WARREN. I wanted to be certain that that was so, because when the espionage bill was drafted, precisely the same provision that appears in secton 13 here, appeared in section 5 of title 5 of the espionage act, and in section 3 of title 7, one relating to neutrality, and the other to export control, and when those two sections were drafted they were drafted giving right of appeal to the Secretary of the Treasury upon decisions of collectors of customs to refuse clearance. Then later I know that the Secretary of Commerce was very insistent, and Congress changed those and inserted the words "Secretary of Commerce." I do not think that I should express an opinion on the merit of this particular matter; but I know that there has been difference of opinion as to the question of law and otherwise. I think that if this amendment is to go in at all it would be very wise to have it apply to the present provisions of the espionage bill, as well as to this trading with the enemy bill.

Secretary McADOO. The amendment, as I suggest it, is meant to clear that and make that uniform in all the bills, not merely in the trading with the enemy bill.

Mr. HALSTEAD. Mr. Warren, you have frequently requested our department to issue instructions with regard to ships; and you never had any trouble?

Mr. WARREN. No, sir.

Mr. HALSTEAD. We have done that. We issue instructions, at the request of the Department of Agriculture, about hides and impure seeds, and so on.

The CHAIRMAN. Do you know why the department changed the provision as you drafted it?

Mr. WARREN. We drafted it for the Treasury. But Mr. Thurman and the Secretary of the Department of Commerce submitted a statement showing that a controversy had been going on for a number of years on the subject, arising out of the fact that, when the Department of Commerce was created, the organic act constituting that department transferred from the Treasury Department all matters of clearance. Was not that it, Mr. Secretary?

Secretary McADOO. Yes.

Mr. WARREN. It was something of that kind.

Secretary McADOO. The act was carelessly drawn in this respect. It is a very unfortunate thing. Let me say about these bills, gentlemen, that if I had been in Washington at the time these provisions were put in the espionage act I would have taken the same position that I have taken with respect to this act, but I was not here, and had no opportunity to be heard about it.

Mr. WARREN. I communicated with your department on it and called their attention to the fact that this question had arisen and that I stepped out from under and left the Treasury and the Department of Commerce to settle it.

Secretary McAdoo. Of course the head of the department being absent nobody was here to speak for the department with respect to the policy. I was busy with the liberty-bond campaign.

I should like to state with emphasis that there is nothing unfriendly in this suggestion about the Department of Commerce. I have the friendliest possible attitude about it. I only want to avoid friction and controversy.

The position of the Department of Commerce with respect to the method of issuing instructions to my employees—to the employees of the Treasury Department—is absolutely technical. It stands upon a technical right and not upon any basis of good order, practice, or procedure. It is merely technical. Their position was sustained by a decision of the Attorney General made some years ago upon purely technical grounds.

Senator Vardaman. Will you state that over again? I did not catch it.

Secretary McAdoo. I say that the position of the Department of Commerce with respect to this right to instruct collectors of customs direct and without proceeding through the head of the Treasury Department rests, in my judgment, upon purely technical grounds, and is not based upon good procedure or good organization. It is a technical right they claim to have under the organic act creating the Department of Commerce. That act transferred certain bureaus, among others the Bureau of Navigation, from the Treasury Department to the Department of Commerce. They can only effect clearances of vessels through the assistance of the collectors of customs.

The Chairman. I would like to ask Mr. Warren if he knows of any other instance in our Government where the head of one department has assumed under authority of law or custom to give direct instructions to the officials and employees of another department?

Mr. Warren. I can not cite you any, but I think there are a few isolated cases.

Senator Vardaman. But I do not think it a wise practice.

The Chairman. Now, Mr. Secretary, is there anything else?

Secretary McAdoo. I have no other suggestions, gentlemen.

Mr. Warren. Of course on the question of the policy it would be highly inappropriate for me to say anything about these amendments, but I perhaps might call the attention of the committee to the fact that if they adopt them, it may necessitate a rather more radical change in framing the bill, for this reason. The bill is readily divisible into four parts.

The first part defines the term "enemy" and makes certain acts penal.

The second part provides for a system by which any act, otherwise unlawful, may be licensed by the Secretary of Commerce. Now, that applies not merely to the export of gold or to foreign credit to or for the benefit of an enemy, but to every possible act of "trade" with or for the benefit of an enemy, as defined in the bill.

Then the third part, which is really in a way separable, is the portion of the bill which deals with the conservation and utilization of enemy property during the war. That deals with the property which may be taken over by the alien property custodian, certain forms of

property being required to be turned by him into the Treasury and other forms of property retained by him.

The fourth part deals with the entirely separable question of patents, that being a peculiar form of property which is to be dealt with in a separate and particular way.

When the war-trade committee of which I was chairman drafted the bill—the other members of the committee being, as you know, the Comptroller of the Currency, Hon. John Skelton Williams, Dr. E. E. Pratt of the Bureau of Foreign and Domestic Commerce of the Department of Commerce, and Mr. Lester H. Woolsey, the Solicitor of the State Department—this question of which department should have administration of this bill was, of course, one of the first questions discussed—a question of which I, as representing the Department of Justice, had no particular knowledge, so that the other three gentlemen conducted most of the discussion on that branch of the bill.

Secretary McAdoo. May I interrupt you there, for the purpose of clarification?

Mr. Warren. Certainly.

Secretary McAdoo. This bill had progressed some ways?

Mr. Warren. Some ways, before the Comptroller of the Currency came in.

Secretary McAdoo. Before the Comptroller of the Currency came in, and it was referred to me because of a few specific features of the bill, as I was going out of town, I asked the comptroller to confer merely as to those particular features.

Mr. Warren. He was named as a member of the committee.

Secretary McAdoo. Yes, afterwards; but his function was really a limited one—that was all.

Mr. Warren. As a result of the discussion, and because of the fact that the administration of the export control act (Title VII of the so-called espionage act of June 15, 1917), which deals with a very analogous subject, was apparently intended to be placed largely under the control of the Secretary of Commerce, it was finally decided by the committee in this first draft of the bill to place the administration of this bill also in the Secretary of Commerce.

Then that draft was submitted to various Cabinet heads, who, after consideration, desired to have a shorter bill; and the bill was returned to the committee. A more concise form of bill was then drafted by us and passed upon by the Cabinet heads and apparently approved. Now, it was realized that many of the functions of the alien-property custodian would be very intimately connected with the Treasury Department, inasmuch as all money and so-called quick assets must be deposited by the alien-property custodian forthwith in the Treasury, and also other forms of property must be deposited by him in depositaries approved by the Secretary of the Tresaury—I am now speaking personally, and not for the committee, because I have not had an opportunity to consult with it since I saw these amendments—we decided to place the alien-property custodian under the direction of the Secretary of Commerce chiefly because we did not want to divide responsibilities between two departments.

My personal view is that if these new amendments of the Secretary of the Treasury are adopted it would clarify and simplify the administration of the act very much if by a further amendment the

whole bureau of the alien property custodian should be transferred to the Treasury Department. In the first place, I think it would be more economical to do it. Do you not think so, Mr. Secretary?

Secretary McAdoo. I think it would on the whole.

Mr. Warren. You could utilize many existing——

Secretary McAdoo. Agencies.

Mr. Warren (continuing). Depositaries and agencies.

Secretary McAdoo. Our warehouses and Subtreasuries would be available for storage.

Mr. Warren. It would operate in this way. Let me take a particular case in point. Supposing you have an alien enemy—and I know at the present moment of many such—who have large deposits in banks, large deposits with private bankers, stocks and bonds with certain brokers, stocks and bonds held by railroad officials, large warehouse accounts and tangible property. Now, under the proposed amendment, so far as the bank deposits are concerned, the Secretary of the Treasury would decide whether he would order those paid over. So far as stocks and tangible property were concerned the Secretary of Commerce would decide whether he would require them to be paid over. They both would be paid over to the alien property custodian, but in the case of the money it would go back into the Treasury, and in the case of the tangible property it would be held by the alien property custodian under the Secretary of Commerce.

The confusion that might result leads me to believe that, if the amendments along the lines suggested by the Secretary of the Treasury are adopted, it would probably be better to go still further, and to take this whole portion of the bill; that is, the portion relating to conservation and utilization of the enemy property, out of the Commerce Department, and put it into the Treasury Department.

Senator Vardaman. I understand from your statement, Mr. Warren, that there are certain functions which this custodian will perform that must be under the Secretary of the Treasury?

Mr. Warren. If these amendments are adopted; yes.

Senator Vardaman. But even if they are not adopted, I understand you to say that there are certain functions which the Secretary of the Treasury must perform?

Mr. Warren. No.

Senator Vardaman. Does he turn certain moneys over to him?

Mr. Warren. Yes; they leave his control entirely.

Secretary McAdoo. Yes.

Mr. Warren. He simply passes them over to the Treasury.

The Chairman. He is the depositary.

Mr. Warren. As the bill is drawn, he functions entirely in the Commerce Department. But with the amendments, I can see that there is a possible chance for confusion; and I see no particular reason for retaining him in the Commerce Department. I do not know what the view of the Secretary of Commerce is. I am simply speaking my personal views.

Secretary McAdoo. My feeling about the problem is this: If I had had any part in the original construction of the bill, I should have somewhat different views from those I now entertain in that respect; but so much has been done along these lines, that my inclination is to try to harmonize the two.

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Senator VARDAMAN. If you will allow me to interrupt you, as a disinterested person who has no interest in the question other than the promoting of the public service, I gather from what I understood and what Mr. Warren says that if that particular function were under the Treasury Department it could be done more cheaply and with greater facility, and I think where it can be done, to avoid a division of authority, it ought to be done.

Secretary McADOO. Well, on the whole, I am inclined to think that that is true, and if the matter had not progressed so far I would be in favor of different action.

Senator VARDAMAN. It is not a question of power and authority in the matter as between the departments.

Secretary McADOO. Certainly not, so far as I am concerned.

Senator VARDAMAN. But where it could be done under one head, it would promote efficiency.

The CHAIRMAN. As a general proposition, that might be all right, but the House has now passed this bill in this form, and you know we are liable to have a great deal of trouble with the House in regard to any amendments that are made, and do not let us change the whole theory upon which this is based.

Secretary McADOO. You will not have any trouble with these changes that I have suggested.

The CHAIRMAN. With these changes you suggest, probably we will not.

Senator VARDAMAN. I say that on the idea that if this matter was brought to the attention of Mr. Redfield and Mr. McAdoo, that both being desirous of promoting the public service, there would not be any conflict on the floor of the Senate.

Secretary McADOO. I do not think this custodian matter is a very important point, and I think you would expedite the passage of the bill if you did not change it. Let us look at it. If the bill, Mr. Warren, is made with respect to the quick assets, stocks, etc.——

Mr. WARREN. The wording that I used is what the Comptroller of the Currency suggested.

Secretary McADOO. If that money should, when it comes into the custodian's hands as enemy property, simply be turned over to the Treasury Department, there is no difficulty there. That is a sharply defined line. Then, with respect to all other property, suppose he finds that enemy aliens have a lot of wheat stored in a warehouse or cotton in a warehouse or steel of various kinds in warehouses throughout the country, that is very properly within the jurisdiction of the Department of Commerce and may be left to the Department of Commerce; and it seems to me it may be better to define the line there.

The CHAIRMAN. Do you expect to find much other property besides this money and these quick assets?

Secretary McADOO. A great deal of it.

The CHAIRMAN. The custodian will be busy, then?

Secretary McADOO. Yes; and I want to put in just as little changes as possible.

Senator VARDAMAN. It is not a question of putting work upon you?

Secretary McADOO. No.

Senator VARDAMAN. Or taking work from your department. It is a question, with me, of doing that which is best for the public.

Secretary McAdoo. Yes; and I have the same desire, Senator.

Senator Vardaman. I am sure you have, and I am sure Mr. Redfield has, and I was just thinking, and I still think, that wherever it can be done without a division of authority it would facilitate matters. However, I have no other interest than what I have stated.

Secretary McAdoo. I think the situation as I have stated it preserves the logical division in the bill, and there is no trouble about cooperation. Well, I am very much obliged to you, gentlemen. I will bid you good day.

The Chairman. Mr. Warren, I understand you want to submit some further remarks.

STATEMENT OF HON. CHARLES WARREN, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES—Resumed.

Trade with the enemy is unlawful under the common law both in England and the United States. (See memorandum of American cases prepared by me and submitted as an appendix to my remarks.) In England it has always been a common-law criminal offense (Regina *v.* Castro (1880), 5 Q. B. D., 490). In the United States, so far as such trade is criminal, it must be made so by Federal legislation, there being no common law of crimes. Such trade has a civil aspect—being unlawful, the acts of all parties engaging in such trade are void, or their rights and remedies are suspended during the war. It has also a Federal fiscal aspect, in that the United States may cause to be forfeited in the courts all property concerned in the unlawful trade. (See memorandum of law hereto attached.)

The questions of what constitutes trade with the enemy and what constitutes an enemy within the purview of the illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of the two countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views

of the present day as to treatment of enemies make possible certain relaxations in the old law.

In former days, trade consisted wholly in the actual transfer and transport of commodities. To-day a form of trade even more helpful to the enemy consists of transfer of credits and money by letter, cable, or wireless. Hence, while formerly the mere accumulation of enemy property or funds in this country did not assist the enemy materially, so long as it remained here, now with the ready ease by which credits may be transferred and funds used it becomes just as important to prevent an enemy from building up, using, or transferring his credit or credits as from actually transferring physical property. Hence much more rigid supervision or prevention of such transactions becomes necessary.

So also, with the greater ease of intercommunication between countries, it may become necessary to expand the class of persons who, within the purview of unlawful trade with the enemy, shall be deemed "enemy." Even under the old court decisions the term "enemy" (when used in connection with trade with the enemy) was not confined to citizens of the enemy nation; it applied under certain circumstances to neutral and their business within the enemy country, and even to our own citizens when having business or property in the enemy country. For these reasons a modern trading-with-the-enemy act must define the term "enemy" according to the particular conditions confronting each country so legislating, and likewise must on the same lines define the particular acts which it thinks necessary to forbid as unlawful trade. It was my intent in drafting this bill to make it as little restrictive of American commerce and as liberal toward the enemy private person as was compatible with the safety of the United States and with justice to American interests.

For the general scope of the present bill (H. R. 4960), I refer to a memorandum in the printed hearings before the House committee, pages 24–25, and also to the testimony of Secretary Lansing, Secretary Redfield, and myself, ibid., pages 3–16, 31–44. For previous American trade with the enemy statutes and proclamations, see printed hearings, pages 26, and United States *v.* Lane (1868), 8 Wall., 185.

The present bill is less stringent, and designedly so, than the present English act. And it is less stringent than the law of trade with the enemy as laid down by our courts, for it provides for a system of licenses by which any act or business forbidden by the bill may be licensed to be done, if the Secretary of Commerce shall be of opinion that it can be carried on or done with safety to the United States. The provisions of this bill greatly amplify and make more practical a system of license or permit which was provided for by the Government during the Civil War. The bill may in some ways interfere with the freedom of American commerce, and it may bear hardly, in places, upon individuals. By this license system, however, we provide a method of relief in individual cases where the relief can be extended without injury to the interests of the country. But it is necessary always to bear in mind that a war can not be carried on without hurting somebody, even, at times, our own citizens. The public good, however, must prevail over private gain. As was said in Bishop *v.* Jones (28 Texas, 294), there can not be " a war for arms and a peace for commerce."

Senator FERNALD. Yes.

Mr. WARREN. The House, as I say, adopted this amendment of Congressman Lenroot, which makes a rather curious provision. It takes up this class of persons—that is, the persons residing outside of Germany but doing business within Germany—and says that so far as that resident outside of Germany is doing business outside of Germany he shall not be an enemy, but that so far as he is doing business within Germany he shall be an enemy. Now, of course, it is all very well to make a provision of that kind, but how could it be enforced? A man, in law, can not be half an enemy and half not.

Senator FERNALD. Of course not.

Mr. WARREN. Take the case of a Mexican doing business within Mexico and within the United States, and also doing business within Germany—that is, having an agency or branch in Germany—as to the assets of his Mexican branch and the assets of his German branch, it is a mere matter of bookkeeping as to where they are used. So that, as I say, as a matter of administration, you can not split a man up according to the places in which he is doing business. This provision would entail the greatest hardship on United States citizens, because United States citizens are forbidden to do business with the enemy, i. e., with persons defined as "enemy" in this bill. The proviso, as I understand it, says that X. Y. in Mexico shall not be deemed an enemy with respect to his transactions connected with the purely Mexican business, but with respect to his transactions connected with his German business—that is, his business done within Germany—he shall be deemed an enemy. Now, there is no possible way in which an American citizen seeking to deal with a Mexican citizen can know whether the Mexican's assets are used in his German business or are confined to use in his Mexican business. In other words, that is a perfectly impracticable provision.

The reason that it was adopted was that Congressman Lenroot stated that the old cases on international law only termed a man an enemy in so far as he had property in the enemy's country. That is true, but this is a question of statutory provision and a question of advisability of domestic law and policy to be determined by the legislature of each country for itself. In the old days, trading with the enemy, of course, was merely by the passage or transfer of tangible property; but nowadays no passage or transfer of tangible property or funds needed in a man's business. It is just as valuable to a Mexican having a German branch to run up his assets in Mexico and use them as the basis of credit in Germany, as it is to transmit or transfer actual gold or money or property; so that the theory on which the old cases confined the term "enemy" to merely affecting property in the enemy country, no longer applies. It is perfectly clear that it may be just as serious a matter to this country to prevent dealings with Mexican or Swiss or Swedish or Spanish houses which have branch houses in Germany as it would be to prevent dealing with Germans themselves. There may be no distinction between the cases, the actual practice and injurious results; and as I first pointed out, you can not either in law or in fact split a man into halves as to his business, as this amendment provides.

It was urged in debate, as I recall, that it was a great hardship to include within the term "enemy" a Swede who might be doing in part a perfectly lawful business and in part an enemy business.

That is precisely the kind of a case in which the Secretary of Commerce would exercise his discretion to grant a license under this bill, if such a license could be safely issued—that is, if an American citizen came and could show that the business in which he proposed to engage with this Swede, who technically was an enemy (as defined in the bill) was a perfectly legitimate business, having no connection with any German business, in which the Swede was also engaged—if that could be shown, that is one of the cases in which this license provision would come into play. In fact, that is an illustration of the value, to my mind, of the broad provisions for licensing which we have made. There is no trading-with-the-enemy bill that ever contained as liberal provisions as this bill; and I believe that, if it passes, it will be only another element in placing the United States on a very high pinnacle in its international relations. If there were no provision for license, it might be necessary to confine your term "enemy" more closely; but where you have a provision for licensing anything that would otherwise be unlawful, then the necessity for making a very restricted definition of the term "enemy" disappears; and you had better make your definition of "enemy" broad enough to cover the necessities of the situation, but not broad enough to cover the injustice of the British blacklisting practices.

Senator VARDAMAN. You have left that in the discretion of the Secretary of Commerce?

Mr. WARREN. If there is any act which is made unlawful, but which can be properly carried on in any individual case, the Secretary of Commerce may license it.

Senator VARDAMAN. Yes.

Mr. WARREN. I say, for these various reasons, first, because it is impracticable; and second, because it is unnecessary, I strongly recommend that that proviso contained in lines 17 to 25 of page 2, and in lines 1 and 2, of page 3, should be eliminated.

Senator VARDAMAN. Lines 17 to 25, on page 2; yes.

Mr. WARREN. I feel certain that the full effect of that proviso was not understood in the House.

Mr. WARREN. The second, and, as I say, practically the only other, change of any fundamental importance inserted by the House was an amendment suggested, I think, by Congressman Rogers. Subsection (*c*) of section 2, appearing on page 3, lines 6 to 12, of the bill, originally contained in the seventh line, before the words "citizens or subjects," the word "natives." This is the subsection which empowers the President by proclamation to include within the term "enemy" such other individuals, or body or class of individuals, as may be "natives, citizens, or subjects of any nation with which the United States is at war, wherever resident or wherever doing business," etc.

The House struck out the word "natives" because it was felt that the term might include Germans who were naturalized citizens of the United States; and it would have done so. That was an oversight in the original draft. It was intended to have the original draft correspond with what is the present alien enemy law (R. S., sec. 4067), which defines alien enemies to be "natives, subjects, citizens, or denizens" of the country with which we are at war, except those who are naturalized citizens of the United States. Now, that should

have been in subsection (*c*), and if it had been, I feel sure that the amendment would not have been accepted by the House, striking out entirely the word "natives." I suggest that the word "natives" be restored in line 7 before the word "citizens," and that after the words "at war" in line 8, there be inserted the words "other than citizens of the United States."

The reason why it is necessary or highly desirable that the President should have the power to include Germans, "wherever resident or wherever doing business"—Germans and naturalized Germans—outside of the United States, is as follows: It has been found, and we know and have known for a long time—we have a great deal of information on the subject—that many Germans, particularly in Mexico, Chile, Switzerland, and other neutral countries, who have become naturalized therein, are just as much Germans to-day as if they had never taken the oath of allegiance in those countries. I suppose that they satisfy their consciences by that German statute which became familiar at the beginning of the war, whereby a man might retain his allegiance to Germany and yet become a citizen of another country. However that may be, there is no question about the facts.

Now, those men we have not, primarily, included in the term "enemy." We felt that it was better not to go any further than the English went at first. It may become necessary, however, that dealings with that class of naturalized Germans should be put an end to; and that was the object of using the word "natives." Of course, as the House has now passed it, it applies simply to subjects and citizens. Everybody, of course, would admit that it should be within the power of the President to bring within the statute a subject of Germany who is doing business ostensibly wholly in Sweden, but really in Germany. It is so easy to do business in Sweden with a Swede as a cloak for doing business indirectly in Germany. The bill as it now stands allows the extension to such Germans resident in neutral countries.

The restoration of the word "natives" (with the limitation that I have put upon it that it shall not include any native who has become a citizen of the United States) makes it possible for the President to bring the bill to bear on German subjects naturalized in countries other than the United States.

Senator VARDAMAN. Naturalized Germans in the United States?

Mr. WARREN. No; in other countries. If this recommendation is adopted, the same changes should be made in subdivision (c) appearing on page 4, which refers to an ally of enemy.

Perhaps I might run over just a few minor things and clear those out of the way. Having disposed of those two matters that fundamentally affect the bill, there is nothing else I think in that portion of the bill of which I care to speak, with this exception: In defining "enemy" we used the words "doing business within such territory"—that is, doing business within Germany; and we used those words with intent, because the words "doing business within the State," of course, have been construed many times by the Supreme Court. It is a very well-recognized phrase, and has a clearly defined legal meaning. "Doing business within" Germany is, of course, different from doing business with a German citizen. I find, however, that apparently that phrase has been mis-

understood by certain business men, and they regard doing business within Germany as synonymous with doing business with a German. Of course the two are entirely distinct; but I submit for your consideration whether it is better to use that phrase or to use the phrase which is found in the English statute, "carrying on business within." Just to illustrate that take, for instance, line 1 on page 2. This commences on page 1, line 8. It is as follows [reading]:

(a) Any individual, partnership, or other body of individuals of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, etc.

The English statute simply uses the phrase "to carry on business within such territory." I do not know whether that is any clearer than "doing business."

Senator FERNALD. It is just the same.

Mr. WARREN. That means having a branch or agency within such territory. The English Act uses the words "carrying on." I do not know whether it is any improvement on our language or not. I simply suggest that for your consideration.

Senator VARDAMAN. What do you think about it?

Mr. WARREN. Personally, I say we use the words "doing business in," because those words have been given a definite meaning by our Supreme Court, and I was surprised to find that anybody misunderstood them.

Senator VARDAMAN. Do the English give that any meaning which our courts have not given to the words "doing business"?

Mr. WARREN. No; the English Act says "carrying on," which is used as synonymous with "doing business within."

Senator VARDAMAN. It does not strike me that there is any difference, unless there is some technical meaning given to those words by the English.

Mr. WARREN. No; there is no difference in technical meaning. It is simply a question whether one is any clearer than the other. I do not think there is any difference.

Senator VARDAMAN. No; I do not, either.

Mr. WARREN. One other point—I suggest that since this act was drafted there have been other acts passed or introduced in which, there have been defined the words "end of the war." On page 5 we define it to mean "the date of exchange of ratifications of the treaty of peace." I notice some other statutes have defined it to mean the date of the issue of the proclamation of ratification. I think, so far as it is possible, our war legislation should have the same verbiage.

Senator VARDAMAN. Where is that?

Mr. WARREN. Line 8, page 5, insert after the words "date of," the words "proclamation of exchange of ratifications."

Senator VARDAMAN. What is your amendment?

Mr. WARREN. "Proclamation of exchange of ratifications."

Senator VARDAMAN. I think that is more definite.

Mr. WARREN. Legally, our wording is correct, because the date of exchange of ratifications is the date on which any change of legal status occurs unless Congress otherwise directs, but I notice that some other legislation pending before Congress uses the words "proclamation of," and I think it is well to have, as far as possible, all the legislation alike; so that I suggest that change.

On page 5, line 16, a comma has been left out after the word "of."

I am merely going through some of the minor matters now.

Senator RANSDELL. Yes, sir; that is all right. Without objection I suppose we will agree to these.

Mr. WARREN. On page 6, line 5, is the next. Beginning in line 3 that reads [reading]:

SEC. 3. That it shall be unlawful for any person in the United States, except with the license of the Secretary of Commerce, as hereinafter provided in section 5—

In order to clarify that and make perfectly certain that the license may be issued not only to the person seeking to trade but also to the person with whom the trade is conducted—that is, that it may be issued both to our citizens and to the enemy—I suggest that after the words "Secretary of Commerce" there be inserted the words "granted to such person or to the enemy or ally of enemy."

That is the intent, and it simply makes it more specific.

The CHAIRMAN. The committee will now adjourn until to-morrow morning at 10 o'clock.

(Whereupon at 12.45 o'clock p. m. the subcommittee adjourned until to-morrow, Saturday, July 28, 1917, at 10 o'clock a. m.)

TRADING WITH THE ENEMY.

SATURDAY, JULY 28, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled pursuant to adjournment at 10 o'clock a. m. in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present: Senators Ransdell (chairman), Vardaman, and Fernald.

The CHAIRMAN. I will ask Mr. Warren to finish this morning the explanation that he was making on yesterday when we adjourned.

STATEMENT OF HON. CHARLES WARREN, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES—Resumed.

Mr. WARREN. I have here copies of the bill, with the suggestions that I am going to make interlined or pasted in in the places where they are to be inserted, and I think it will be very easy to follow the matter. I have nothing further to suggest than the amendments here inserted.

The CHAIRMAN. Are there some parts of these suggestions that we might desire testimony in regard to, in explanation?

Mr. WARREN. Yes; I think I can probably shorten the thing by explaining each one of them. I finished with several of them yesterday.

The CHAIRMAN. All right; we will let you do that in your own way.

Mr. WARREN. Lines 6 to 17, of page 2 (consisting of this proviso which I suggest should be stricken out), bring up the insurance company question. That proviso was inserted by the House committee. It is the only amendment which they made on which they did not confer with me at all.

The reason for striking that out and for the insertion of some such amendment as I have prepared here after conference with Senator Frelinghuysen and the insurance company representatives is this: The original theory on which the bill was drafted was that so far as branches of German corporations doing business in this country were concerned, whether they were insurance corporations or business corporations, if they had a branch or an agency in this country they were German enemy corporations. Under the common law they have no right to do any business in this country at all. On the other hand it is evident, of course, that as to insurance companies, arrangements should be made for the continuance of business of certain kinds. As

to manufacturing corporations having branches or agencies here, some could safely be allowed to continue and others could not.

The theory of the bill was that the doing of any business in this country by German corporations being made unlawful by the terms of the act, we left that in the same manner as all other unlawful acts, to be licensed by the Secretary of Commerce if after investigation he felt that it was safe for license to issue—to be licensed under such conditions and rules, regulating the manner of carrying out the business and providing for such control of the business by this Government as the Secretary of Commerce might deem wise. That was in line with the general policy of making this bill as general as possible and not making specific provision for specific kinds of businesses.

The moment the war broke out there was immediate necessity for temporarily legalizing the business in the United States of branches of German insurance companies, because that affected vast interests of American citizens. We could not allow the common law to apply and make that business absolutely illegal on and after the 6th of April. Therefore the President, after consultation with the State Department and myself, issued his proclamation regarding the branches of German insurance companies, at once, on the 6th of April, permitting them to continue to do business, with certain safeguards regarding the transmission of funds into Germany or the allowance of funds to be used as the basis of credits. That proclamation, however, was intended as a temporary expedient. It was prepared rather rapidly, and I think the belief was that Congress would have passed the "trading-with-the-enemy" bill long before August, 1917. At least, it was hoped that it might.

However, the proclamation of the President was only a temporary expedient to cover the interim period. Later on, when we learned more facts, it was found that it was undesirable that the business of marine and war reinsurance should continue to be done by German insurance companies, and thereupon the President issued his proclamation of July 13, two weeks ago, in which he modified his original proclamation and forbade the doing of marine and war-risk business in the future.

Senator VARDAMAN. Still confining the business to the American branches, is it not?

Mr. WARREN. This all referred to branches of German insurance companies doing business here in this country.

Senator VARDAMAN. To the American branches?

Mr. WARREN. It only applied to the American branches.

Senator VARDAMAN. Yes.

Mr. WARREN. But this proclamation of July 13, 1917, contained certain provisions regarding existing contracts, providing for the preservation of these for the benefit of American citizens.

Before the President issued this second proclamation the House had adopted this provisio (on p. 2), in which it is provided [reading]—

> *Provided*, That nothing in this act shall impair or affect the President's proclamation of April 6, 1917, or any amendment, modification, or revocation thereof, in relation to the branches of enemy or ally of enemy insurance companies in the United States, when such branches are under the management of citizens of the United States.

That is, the House enacted into law the provisions of the President's temporary proclamation of April 6, 1917, or any modification

of it, until he should revoke it. It enacted that into law with reference to certain companies only, i. e., companies whose branches were under the management of citizens of the United States. That left the other companies to be dealt with according to the remaining provisions of the bill, i. e., the other companies were to be subject to license by the Secretary of Commerce.

Senator FERNALD. A different arrangement.

Mr. WARREN. If he saw fit. Furthermore, they all, even under this proviso, would become subject to the license of the Secretary of Commerce if the President should revoke his proclamation.

It seems to me that the House in adopting that did not quite see the effect. There is no reason why there should be enacted into law a proclamation that was intended in its essence to be only temporary, until Congress should take cognizance of the whole subject.

In the second place, if it had been understood that the President's proclamation was to be enacted into law, it would undoubtedly have contained more restrictions and provisions; it would have had to deal with the subject more in detail; but, as I say, its original intent was only to provide means for covering the interim period. It is manifest that it is far better to leave the question whether any particular German company shall or shall not do business—no matter whether it is this or that company or whether or not it is under the management of an American citizen—it is much better to leave to the investigation of the Secretary of Commerce the question. Is it a proper company to license to continue to do business here? And for the reason, therefore, that even the present proviso puts certain companies under the Secretary of Commerce, and the present proviso, if the President revoked his proclamation, would put all the rest of them under the Secretary of Commerce, it seems to me it is much wiser legislation to restore the bill to its original shape and to leave it all at once to the Secretary of Commerce to license, if he deems it wise so to do.

The CHAIRMAN. Do you strike this out?

Mr. WARREN. I have here the amendment that I intend to put in its place.

Senator VARDAMAN. Read that, if you please.

Mr. WARREN. And I have a copy of this for each of you gentlemen. This is a long amendment and covers more than that particular point. The first part is as follows [reading]:

SEC. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every other enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this act, apply to the Secretary of Commerce for a license to continue to do business; and, within ninety days after such application, the Secretary of Commerce shall enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise and for such period of time and may contain such provisons and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company as the Secretary of Commerce shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the Secretary of Commerce shall determine: *Provided, however*, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the Secretary of Commerce to be doing business with such reinsurance company.

In my amendment, I have included the effect of the President's last proclamation, of July 13, 1917, regarding marine and war risk insurance companies, and I have made a provision [reading]:

The Secretary of Commerce, however, shall have no power to license any enemy or ally of enemy insurance or reinsurance company, or other person, to do any act or to carry on any business prohibited by the President's proclamation of July thirteenth, nineteen hundred and seventeen.

I think there will be no question about the wisdom of that provision. Every department of the Government is now agreed that it was a mistake to allow any German insurance company or reinsurance company to do any marine business. I do not think it had any evil effects, but it might have had in the future.

The CHAIRMAN. Yes.

Mr. WARREN. So that, in my suggested amendment, I eliminate the Secretary's power to license that business at all. They must close up.

The CHAIRMAN. That applies to marine insurance?

Mr. WARREN. To marine and war-risk insurance.

The CHAIRMAN. Yes.

Mr. WARREN. The amendment then makes further provision, which those insurance companies are very anxious for, to make it pefectly clear that they retain all their rights to recover any premiums which they have paid, or any property which they have deposited with the reinsurance companies; and that, of course, should be carefully protected. As a matter of fact, it was fully protected in the bill as drawn. And there, again, a provision put in in the House was absolutely unnecessary and may be eliminated.

The CHAIRMAN. What page is that on?

Mr. WARREN. It was an amendment inserted by Congressman Parker of New Jersey, but it was unnecessary then, and it will be entirely unnecessary if the amendment which I now suggest is adopted. It was inserted as a proviso on page 16. It was inserted during the debate, and did not fit in at all with the rest of the bill. You will notice that it repeats language which was already in the bill. The proviso beginning on line 4 and ending on line 24 should come out, both because it repeats provisions which are already made in section 9 as originally drafted, and because the amendment which I am now going to suggest will entirely cover, in very short language, that entire long proviso, and I recommend that that be taken out.

The third matter which this amendment which I am suggesting covers—and for the purpose of identification I am going to call it section 4 (*a*)—is this; and, frankly, I think that we ought to have included it in our original draft of the bill. As I say, at the present time, at common law the doing business within this country by a branch of an enemy corporation is unlawful. It is also made specifically unlawful by the bill, so that the moment the bill is passed, technically speaking, a man continuing to do business—the agent or the manager over here—would be violating the act. It is the intent, however, of course that those branches and agencies of German corporations shall apply to the Secretary of Commerce for a license. There should, therefore, be some provision by which, pending the filing of an application for license and the decision of the Secretary granting it or refusing to grant it, the business might temporarily be

legalized—pending, I say, the granting of the license or the refusal. That should apply not merely to branches of German insurance companies, but also to branches of German manufacturing corporations, etc.

For instance, there is a very large and prominent manufacturing corporation which was very prominent in the hearings before the House committee and before the Department of Justice, complaining that the bill did not give any authority to them to continue business. They entirely overlooked the system of license. That corporation may or may not be a proper one to license. I have very decided views on the subject. I am merely using this as an illustration. It is now doing business and making certain things, I think, for the United States Army. There are others that temporarily some provision must be made for, to remove from them the penalties of the law.

Senator VARDAMAN. Pending application for license?

Mr. WARREN. Pending application for license. So that I have drawn this amendment not only to cover German insurance companies, but other German branch businesses, and to avoid the allegation that we are picking out one form of business and considering that and not considering other forms of business.

The CHAIRMAN. Does that substantially take the place of section 4 as it passed the House?

Mr. WARREN. No; section 4 as it passed the House is another matter, and I would make it section 4 (b) to avoid renumbering all the sections. I have here two copies of this proposed section 4 (a). It reads as follows [reading]:

"4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every other enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this act, apply to the Secretary of Commerce for a license to continue to do business; and, within ninety days after such application, the Secretary of Commerce shall enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise and for such period of time and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company as the Secretary of Commerce shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the Secretary of Commerce shall determine."

Then what follows is on one of the points that these insurance gentlemen wanted particularly to be inserted [reading]:

Provided, however, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted, to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the Secretary of Commerce to be doing business with such reinsurance company.

They were very much afraid that the Secretary of Commerce might arbitrarily revoke a license to an insurance company to do business, in which case they would be at a loss to know where to transfer their risks, or what to do with the risks they had insured.

Senator VARDAMAN. Do you think it would be necessary as a precautionary measure to require those companies to file with the Secretary of Commerce the names of the companies with which they are doing business, in order that that notice might be given, and avoid the possibility of difficulty? That is merely a suggestion.

Mr. WARREN. I will think that over. Then there follows the provision covering the interim period [reading]:

For a period of thirty days after the passage of this act—

That is the time during which they could apply for a license [reading]—

and further pending the entry of such order by the Secretary of Commerce after application made by any enemy or ally of enemy insurance or reinsurance company within such thirty days as above provided, the provisions of the President's proclamation of April six, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such enemy or ally of enemy insurance or reinsurance company, anything in this act to the contrary notwithstanding.

That simply retains the President's proclamations to cover this interim, as they were really only intended to cover pending final action.

Senator VARDAMAN. I can not recall it, and will you state what are the terms of the President's proclamation on that?

Mr. WARREN. I will just summarize it.

Senator VARDAMAN. Yes.

Mr. WARREN. It is that branch establishments of German insurance companies now engaged in the transaction of business in the United States are authorized and directed to continue the transaction of their business in the same manner as though a state of war did not now exist, provided that the funds of the establishment shall be subject to rules and regulations concerning the payment and disposition that shall be prescribed by the supervising insurance officials of the State, and in no event shall any funds belonging to them be transferred outside of the United States or be used as the basis for the establishment of any credit outside of or within the United States.

The proclamation of July 13 simply forbade the doing of any business in the way of marine or war-risk insurance, with certain provisions validating their existing contracts.

Senator VARDAMAN. You say it forbade their doing reinsurance business?

Mr. WARREN. Either direct insurance or reinsurance on marine or war risks.

Senator VARDAMAN. It was confined to marine insurance?

Mr. WARREN. To marine insurance and war risks.

The CHAIRMAN. Not interfering at all with fire insurance?

Mr. WARREN. Not interfering at all with fire insurance or any other insurance. The proclamation of July 13 modified the proclamation of April 6 by restricting the broad permit which had been given by the original proclamation.

Senator FERNALD. Have you any idea how many of those insurance companies were doing business here?

Mr. WARREN. Fire insurance?

Senator FERNALD. Yes.

Mr. WARREN. I have the figures, but I can not carry them in my mind. There were eight or nine reinsurance companies, I think.

The CHAIRMAN. There are less than 20 of them, all told.

Mr. WARREN. Yes.

The CHAIRMAN. Those figures were all put into the hearings the other day.

Mr. WARREN. Yes.

The CHAIRMAN. There were seven of the reinsuring companies, and either four or five of the direct insuring companies.

Mr. WARREN. The companies are not many in number, but the amount of the interests involved is very large.

The CHAIRMAN. Yes; there were about $20,000,000 in premiums annually of insurance that they were carrying and about $2,000,000,000 worth of insurance.

Senator WARREN. This is not a question that was overlooked at all by the war trade committee. We gave many hearings and took up the matter, and the original idea was to allow the licensing by the Secretary of Commerce.

Senator FERNALD. Those licenses will have to be granted by the Secretary of Commerce to the company? One license will be sufficient for the company?

Mr. WARREN. Yes; we provide that a license may be general or special.

I have read the provision covering the interim period as to insurance companies.

Now, as to branches of all other German corporations doing business within the United States, I make the following provision in this amendment [reading]:

And for a period of 30 days after the passage of this act and further pending the entry of such order by the Secretary of Commerce after application made within such 30 days by any enemy or ally of enemy, as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, or account of, on behalf of, or for the benefit of such enemy or ally of enemy, anything in this act to the contrary notwithstanding: *Provided, however*, That the provisions of sections three and fifteen hereof——

The CHAIRMAN. You want to interline section 15, so as to make it apply to sections 3 and 15, there?

Mr. WARREN. Yes. Is it not interlined on your copy?

The CHAIRMAN. No.

Mr. WARREN. Sections 3 and 15 are the sections which create the criminal penalties.

Senator FERNALD. Yes.

Mr. WARREN (continuing reading):

Provided, however, That the provisions of sections three and fifteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property outside of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of an enemy or ally of enemy.

That makes the same provision regarding other corporations that the President made in his proclamation regarding insurance companies, viz, that they could do business in this interim period provided they should not transmit property outside of the country or should not use it as the basis for the establishment of credits.

Senator VARDAMAN. This law provides for corporations, and also individual partnerships?

Mr. WARREN. If theyare partnerships of nonresident Germans doing business within the United States. It does not touch Germans doing business in the United States for their own benefit and having no business in Germany; because they are taken care of under the President's original proclamation regarding alien enemies, who are allowed all the rights and privileges of American citizens so long as they behave themselves. That is taken care of there. This bill does not deal in any way, shape, or manner with a German citizen doing business on his own account in this country. They are not included within the term "enemy," although they may not trade with an enemy, any more than a United States citizen may.

Senator VARDAMAN. For instance, if a German living in the United States should have a partner, perhaps, living in Germany interested in the business; is any provision made as to that?

Mr. WARREN. In the first place, under the general provision of law a war dissolves all partnerships with an enemy, absolutely, ipso facto. But if this German in the United States, regardless of the legal status, continues to do business within Germany, he does not become an enemy. The acts which he does, however, will be acts of trade with an enemy. That is, we do not want to make any man in this country an enemy, but we penalize him if he trades with an enemy.

The CHAIRMAN. The theory on which this bill is framed, as I understand it, is to confine it to things or business or commerce of some kind that are going to benefit the enemy, and not to the individual himself who happens to be there?

Mr. WARREN. Not at all, the individual.

Senator RANSDELL. It does not touch it unless it is going to be to the benefit of this alien enemy.

Senator VARDAMAN. I can not see the distinction.

The CHAIRMAN. I can draw an illustration. There may be a German in this country who is doing a good, square business, not taking any part at all with Germany; he is a farmer or a business man and he is confining his efforts entirely to this country.

Senator VARDAMAN. But that is not the question that I was asking Mr. Warren. The point I make is this. We will say Mr. Warren and I are engaged in the steel business in Pittsburgh. He happens to be a citizen of Germany and I am a citizen of the United States; or I may be—we will say for the sake of this discussion that I am—a German citizen and he is a resident in Germany. He has put his money in this business. The business is going on, and it seems to me that if the business is going to be permitted to go on there ought to be some protection to prevent the profits from being used by the partner in Germany, just as you do with the stock in a corporation.

Mr. WARREN. Let me point out the distinction between what an enemy may do and what a person in the United States may not do with or for an enemy. Take the case that you put, of a man in this country in partnership with a German in Germany. The concrete case would arise in this way: Is he doing business in this country for or on behalf of this German in Germany? If he is, the bill forbids it, because the man is trading for or on behalf of an enemy, the man in Germany being an enemy, and the act of trade is unlawful here until he gets a license. That is the way you get at that.

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Senator VARDAMAN. That is the point I was trying to draw out. There is nothing said in your amendment or in this bill so far as I can make out, about partnerships of that kind.

Mr. WARREN. We define the word "person" to include partnerships.

Senator VARDAMAN. It may be covered in that way.

Mr. WARREN. The definition includes corporations, partnerships, individuals, trustees, etc.

Senator VARDAMAN. All right.

Mr. WARREN. I read further from this amendment [reading]:

If no license is applied for within 30 days after the passage of this act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company, or other person, making application, or if any license granted shall be revoked by the Secretary of Commerce, the provisions of sections 3 and 15 hereof shall forthwith apply to all trade or attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person.

That is, if they do not apply within the 30 days, or do not get a license, then of course at once the penal provisions of this bill come into force forthwith.

Now follows a clause which the insurance companies wished in order to make it perfectly clear that if the licenses to insurance or reinsurance companies were refused or revoked, the claims or premiums or other money claims of American citizens should be protected. It reads as follows [reading]:

Provided, however, That after such refusal or revocation, anything in this act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, having insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company payment of any preexisting return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the time of such refusal or revocation of license; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section 9 hereof.

Now, that last short clause covers the whole——

Senator VARDAMAN. Where does that come in the bill?

Mr. WARREN. This whole amendment would become section 4 (*a*), and that last short clause of four or five lines would take the place of the long, cumbrous proviso inserted by Congressman Parker's amendment on page 16, lines 4 to 24, inclusive. That is all I have to say on that.

The CHAIRMAN. That would seem to be clear.

Mr. WARREN. That is all on this particular section. The present section 4 on page 7 deals with somewhat analagous matters, that is, the name of enemy partnerships.

The CHAIRMAN. The present section 4 would become section 4 (*b*)?

Mr. WARREN. Yes.

The CHAIRMAN. Before leaving this section you are speaking about, I notice on page 3 you make certain slight changes. For instance, the word "natives" you have inserted there.

Mr. WARREN. I explained that at length yesterday.

The CHAIRMAN. Yes; I think so. These other small changes on pages 4 and 5 you explained yesterday, did you not?

Mr. WARREN. Yes. I will begin on page 2. The second proviso on page 2, regarding the definition of "enemy," I explained at length yesterday, and my recommendation is in accordance with my explanation of yesterday—that that second proviso, on page 2, should be stricken out.

The changes in lines 14 and 16, on page 4, I explained yesterday, and also the change in line 8, on page 5.

Now, I think I can take this up in orderly fashion. I have mentioned the proviso in section 9, on page 16, which was inserted and which has already been taken care of in this new amendment to section 4. Both that proviso on page 16 and an insertion on pages 17 and 18 beginning with lines 8 to 25, on page 17, and including lines 1 to 17, on page 18, were inserted bodily into the bill without apparent inquiry as to whether the bill already covered that or not. It was inserted in the House, where it was proposed by Congressman Mann, as you will see from the Congressional Record of July 11, 1916, pages 5461 and 5462, and in order to show you the circumstances let me read this very brief extract from the debate [reading]:

> Mr. MANN. I introduced it as a House bill so as to have it in print.
>
> Mr. ADAMSON. I would be very glad if the gentleman would make a little explanation of it, because it occurred to some of us that the matter was already covered by the terms of the bill.
>
> Mr. MANN. I will not undertake to be certain that it is not covered already by the terms of the bill. * * * I introduced it as a House bill in order to get it into print and have it before the committee, and I offer it now with the idea that there is no objection to what is intended to be covered by the amendment. This bill will pass through another body and will pass through conference. I think it is very likely that some of these things may be consolidated with other provisions of the bill, but I do not see how anybody could really object to the provision that is here made.

The amendment was thereupon adopted without further debate.

As a matter of fact, everything, with one exception, that was in that separate bill, which was simply chucked into this bill, is already provided for by the previous provisions of section 9 as originally drafted, and I recommend that lines 8 to 25, on page 17, and lines 1 to 17 of page 18, inclusive, be stricken out. I can explain that, I think, very shortly. Congressman Mann's bill provided for three distinct cases, and you will readily see that they were already covered.

By section 9 as originally drafted we provided a method by which, after any property had been taken over by direction of the President, any American citizen who might have any claim to that property or any right in that property was given a means by which his claim could be asserted and established. Of course, it would not be fair to take over money into the Treasury of the United States without providing for some possibility that there might be adverse claims of American citizens which should be protected, and in the most general language we made a provision protecting claims of United States citizens.

We provided that any person—that includes corporations and partnerships—not an enemy or ally of enemy, claiming any interest or right of title in any money or property which might have been conveyed, etc., to the alien-property custodian, might file claim under

oath with the alien-property custodian and might bring suit in any district court of the United States at any time up to the time of the expiration of six months after the war. That is, we made a general clause in as general language as we could make it so as to cover any particle of claim that any United States citizen might have to this money.

Congressman Mann's amendment took three separate, individual cases and said, "In these cases there shall be a right to assert a claim against these funds," and the three specific cases were these:

One, the case where an American citizen was resident in Germany at the time the funds were taken over, and therefore was an enemy at the time—that is, an enemy for the purposes of this act at the time—when the property was taken over, but where he afterwards removed out of Germany; and under those circumstances the Mann amendment gave him a right to sue; but he would have a right to sue anyway, under the bill as originally drafted, because the moment he moved out of Germany he became a United States citizen and came within the general provisions of section 9.

The second case was where the property was taken over under a mistaken apprehension that the man who owned it was an enemy, and where it should turn out afterwards he was not in fact an enemy. The Mann amendment gives him in that case a right to sue; but he had a right to sue, anyway, because under the general clause of section 9 any person not an enemy could sue, and one of the elements of the suit would have to be the establishment of the fact that he was not an enemy; and if that were a fact he could establish it and sue.

The third case covered by the Mann amendment was the case where the property was taken over by the alien-property custodian—enemy property—and afterwards the enemy died and an American citizen inherited a part of the whole of that property. Of course the moment that the American citizen inherited part of the enemy property in the hands of the alien-property custodian, he thereupon acquired a claim, right, title, or interest, and could sue anyway under the bill as originally drafted. So that there, again, the amendment was entirely unnecessary.

Senator VARDAMAN. It was just a repetition?

Mr. WARREN. Yes. Now, the only portion of the Mann amendment that contained something that was not in the original draft of the bill was this, and I am going to submit this question to your committee, as to the wisdom of making the change. The Mann amendment provided not merely for the establishment of the American citizen's right of claim by suit, but provided that he might apply to the Secretary of Commerce for a return of the property—that is, property which was already in the Treasury of the United States or in the hands of the alien property custodian—and if the Secretary of Commerce did not grant the application for a return, he might sue.

Now, we considered that in drafting the bill and, frankly, I was of the opinion that that power ought not to be given the Secretary of Commerce. In the first place, I felt pretty confident, as a practical matter, that there would be very few cases when the Secretary of Commerce would desire to take the responsibility of adjudicating the validity of the claim or the validity of the right, title, or interest

claimed by the United States citizen; so that as a matter of practical administration I was of the belief that the Secretary of Commerce, in order to protect himself, would relegate anybody to a suit.

Senator VARDAMAN. Where is that provision you are now discussing?

Mr. WARREN. The provision of the amendment of Congressman Mann?

Senator VARDAMAN. Yes.

Mr. WARREN. That is contained in lines 24 and 25 of page 17 and lines 1 to 3 of page 18, as follows [reading]:

The Secretary of Commerce may, upon application, by or on behalf of such person and proper showing of the facts, authorize and direct the return to him, in such manner as the Secretary shall determine, of any such property or any part or interest therein to which he may be so entitled. If the Secretary of Commerce does not grant such application within three months after the same is made, the person so entitled may institute a suit in equity.

The CHAIRMAN. Would he not be entitled to all of his rights in the court, even if we left this out?

Mr. WARREN. Yes, sir.

The CHAIRMAN. There is no necessity to leave this clause in to preserve the rights of the citizen?

Mr. WARREN. We gave him the right to go into the courts, and the Mann amendment gives him the right also to go to the Secretary of Commerce.

Senator VARDAMAN. You will find this argument made in favor of that. We had something of that kind suggested the other day.

Mr. WARREN. Yes.

Senator VARDAMAN. The argument will be made that a man who has property in the custody of the alien-property custodian, if there is no contest over it, ought to be permitted to enjoy the use of his property without going to the expense of maintaining a suit; but I can understand how the Secretary of Commerce would prefer that this claim be established in a court of law; and if there were very many such cases it would take a great deal of the time of the Secretary of Commerce.

Mr. WARREN. As I say, we considered that in drafting the bill, and we intentionally omitted any provision of that kind. However, after listening the other day to the insurance people regarding their particular problems—the cases where they may have paid over and would want to get back their return premiums from any of these insurance companies if the Secretary of Commerce should close them up—I have prepared this very carefully guarded amendment. I do not know whether it goes as far as they desire, but it is a part of the amendment I submitted to Senator Frelinghuysen, and you will find it inserted in the redraft of the bill which I have submitted to you, on page 15. There is a slip pasted in there, and that would be an insert in the bill as originally drafted. I suggest striking out in line 10, page 15, after the word "require," the other four words, and striking out lines 11 and 12 and inserting in their place the following [reading]:

and the Secretary of Commerce, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so

held by the alien-property custodian or by the Treasurer of the United States, or of the interest therein to which the Secretary of Commerce shall determine said claimant is entitled: *Provided*, That no such order by the Secretary of Commerce shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the Secretary of Commerce shall not so order within sixty days after the filing of such application, or if the claimant shall have duly filed the statement or notice above required and shall have made no application to the Secretary of Commerce, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity, etc.

That is, I restrict that simply to the case where the owner of the property and every other person claiming any interest at that time assents, and provide that the Secretary of Commerce may return it. But even then I do not protect the claimant who gets his property back from being sued by anyone who thinks he still has a claim.

Senator VARDAMAN. This amendment prevents the Secretary from doing that if there are claims filed and those claimants do not assent?

Mr. WARREN. Yes, supposing there may be one or two or three claims, or any number, in opposition to that action by the Secretary.

Senator VARDAMAN. In that event it goes to the court?

Mr. WARREN. Yes; in that event it goes to the court.

Senator VARDAMAN. I think that is a safeguard that ought to be made.

Mr. WARREN. I do not know whether that will satisfy the insurance companies or not, but it is as far as I, personally, believe that Congress ought to go.

Senator VARDAMAN. What more could they ask for?

Mr. WARREN. They wanted a return from the Secretary of Commerce if he was satisfied with their evidence.

The CHAIRMAN. That is making the Secretary of Commerce a court.

Senator VARDAMAN. It is not only that, but it is denying to the people who have claims the right to go into a court of justice for the determination of their rights.

The CHAIRMAN. We will agree with you on that proposition, I am sure. What is the next one?

Mr. WARREN. If that very restricted amendment goes in there at the point I have noted it on page 15, there are certain minor amendments that must follow that, in other sections. As the bill is now drawn there is no power given to the Treasurer of the United States or to the alien property custodian to pay out money that is in the Treasury or to return property that is in the hands of the alien-property custodian, except upon order or decree of the court, and therefore there must be certain minor amendments to allow him——

Senator VARDAMAN. To conform to this?

Mr. WARREN (continuing). To allow him to pay out and return the money upon the order of the Secretary of Commerce under these particular circumstances; and therefore these additional amendments will become necessary. They are already inserted. They are inserted in the draft you gentlemen have, but for the purposes of the record I will state them so that you may be able to follow the connection. I will just state it this way: If the amendment of lines 10, 11, and 12 on page 15 in section 9 is adopted, and only in case such

amendment is adopted, then the following amendments will be necessary:

1. Amend section 9 by inserting in line 18 of page 15, after the words "so claimed," the following: "and if suit shall be so instituted."

2. And by amending section 11 by inserting, after the words "on order" in line 10 on page 26, the words "of the Secretary of Commerce as set forth in section 9 hereof or."

3. And by amending section 11 by striking out lines 14 and 15 of page 26 and inserting in their places the following: "and pay to the person to whom the Secretary of Commerce shall so order or in whose behalf the court shall enter final judgment or decree any property of an enemy or ally of."

And by amending section 11 by striking out the words "of the court" in line 17 of page 26 and inserting the following: "of the Secretary of Commerce or said final judgment or decree of the court."

The absolute impossibility, in a bill affecting legal rights and statutes, of inserting amendments in debate without thorough consideration, is very well illustrated by the insertion of these two amendments of Congressman Parker and Congressman Mann, because they necessitated other changes throughout the bill.

Senator VARDAMAN. That, you know, is so often done in Congress with the idea of just throwing them into the hopper, or taking them into the stomach—into the legislative system—to be digested by the conference; and you have pointed out the evil of such a practice.

Mr. WARREN. Of course it is peculiarly disastrous in a bill that affects legal rights and status. In the case of legislation of an administrative character it is not so fatal; but it is absolutely fatal in a bill affecting court procedure. Is there any other question on that point?

The CHAIRMAN. I think that is clear enough, sir.

Mr. WARREN. Now, going back and taking the bill up in order, having covered everything on pages 1, 2, 3, 4, and 5, I suggest that on page 6 you will find interlined a few purely grammatical changes. Somewhere or other, during the course of many redraftings and committee draftings, and so on, of this bill, the words "to or from" have been dropped out in three places, in lines 6, 13, and 17. The necessity of the insertion of those words in those three places will be very apparent. In order to make it more concise, we defined on page 5 the words "to trade." An indictment under this section would be drawn in somewhat the following language: That A did, in violation of law, trade with X, in that he did pay to X, an alien enemy, a certain sum of money.

The preposition "to" is necessary there. The word "pay" is one of the elements of the term "to trade"—a part of the definition.

Or an indictment might be drawn: That he did unlawfully trade with the enemy in that he did receive from.

That is, in drawing an indictment you have got to pick out the appropriate preposition to go with the particular form of unlawful trade that you are setting out in your indictment. That is all I have to say on that subject. It was an oversight, and I think those words were in some draft of the bill, at some particular stage.

On page 7, an amendment inserted in the House, a change in the original wording of the bill, makes necessary a still further change,

purely as a matter of completeness and not in any substantive way. Lines 15, 16, and 17 on page 7 allow the Secretary of Commerce to—

grant licenses, special or general, to any person or class of persons, to perform any act made unlawful in section three of this act without such license.

The original draft of the bill was "to perform any act hereunder." You will readily see that that referred to any license that might be granted anywhere in the bill by the Secretary of Commerce; but the House, confining it to this section 3, overlooked the fact that a license from the Secretary of Commerce is also necessary in connection with subsection (*b*) of section 10; and if you adopt the new clause, section 4 (*a*), which I have explained this morning, regarding licenses to insurance companies or branches of German corporations, you will want to make a special reference to that kind of license; so that I have suggested the amendment in this form, and it makes a very slight change, as you will see [reading]:

And the Secretary of Commerce may, under the direction of the President, grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (*a*) of section 4 hereof, and to perform any act made unlawful, without such license, in section 3 hereof, and to file and prosecute applications under subsection (*b*) of section 10 hereof; and he may revoke or renew such licenses from time to time if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may, with the approval of the President, make such rules and regulations, not inconsistent with the law, as may be necessary and proper to carry out the provisions of this act.

The CHAIRMAN. That would seem to be necessary, I think.

Mr. WARREN. I think that is necessary. On page 8 I have no suggestion to make.

On page 9, some gentleman in the hearing—it was Mr. Thurman, I think—presented objections to the proviso which was inserted in the House, lines 5, 6, and 7. I entirely agree with him that that should go out. That proviso is [reading]:

Provided, That no person shall be appointed who is liable to be drafted into the military service of the United States.

That should go out. It would very seriously interfere with the service. They can not get any exemption by being employed; but I can see a great deal of objection, as an administrative matter, to those words.

Coming now to section 7 (*a*), that is one of the sections in which Mr. Boston, of New York, was particularly interested. I may say that his suggestions of amendments in that section were presented by him or his associates to the House committee and were not accepted, although I stated that I had no objection to them, but that I was not particularly impressed with their necessity. I still have no objection to the insertion of the words. They want to make it perfectly clear that their corporations are not going to be held liable for failing to return the name of an enemy stockholder whom they do not know to be an enemy stockholder. I do not believe that under the law they would be held liable, anyway. I think that the law is that a man can not be held liable for failing to return the name of an enemy stockholder if he does not know that the person is and has not reasonable cause to believe he is an enemy stockholder.

The CHAIRMAN. I see no objection to putting it in, and I believe it would be a good idea to put it in.

Mr. WARREN. Yes. Although, as I say, I think it only states the law as it would be without it, anyway. I have suggested, and I agree with Mr. Boston's suggestion, that in lines 17 and 18 there be an amendment to that effect, and I also agreed to Mr. Boston's amendment, that at the end of line 25 there be inserted the proviso that if, after the list is made up, it turns out that anybody on that list is not in fact an enemy stockholder his name can be stricken out. I do not know why they want that, because I can not conceive that it would damage anybody to have his name on the list; but I see no objection to that.

I have suggested a further amendment at the end of line 25, page 9, which I shall have to explain at length, because that does present a real change or addition to the bill.

After the matter had got into the House for debate the representative of the Secretary of State took up with me the question, and asked me to present it very strongly when the matter came into the Senate. Both the Departments of State and Commerce are interested. The reason why we did not cover it in our original bill was that we did not know as many facts then as we do now. There is not the slightest doubt that with their usual foresight the Germans not only damaged their ships the moment the submarine note was sent in on January 31, but at that moment they began to make every other preparation for war, in commercial and financial ways, in this country. All the information which we have been able to gather now, during these past four months, satisfies us that even if you had passed a trading with the enemy bill on the 6th of April, many matters which would have been highly beneficial to this country to prevent would have already taken place in this financial and commercial way.

To be concrete, if not on January 31, certainly on February 3 when Von Bernstorff was given his papers, they began to transfer large sums of money, credits, and other property, and sent much of it out of the country by cable and much of it out of the country by actual transportation, and they began to cover up much other property in the country by various transfers, assignments, etc., or attempted to cover it up.

So far as the gold and other property left the country either by transportation or by the transfer of credits, of course, that is gone. We can not get at it in any way. So far as the Germans put themselves in a better financial position by those transfers nothing can be done about it.

But so far as they attempted to cover up their financial and business interests in this country by transfers of one kind and another made since the 3d of February, it is highly desirable that in some way there should be some power of attempting to uncover those transfers, and therefore the Secretary of State and the Secretary of Commerce were anxious that in addition to the list of persons who there might be reason to believe were stockholders at the time of the passage of this act, and in addition to the list of persons who might be holding property for Germans at the time of the passage of this act, there might be some method by which we could be enabled to get information regarding what was the status of those stockholdings or property holdings on the 3d of February; not that

we can penalize, or make the act in any way retrospective insofar as imposing any penalties or forfeitures is concerned, or in any way invalidate the transactions prior to April 6, 1917; but simply that we may have a provision by which we can get information as to those transactions and test up the bona fide status of the present holdings.

In other words, if we found that, we will say, a German holding large funds deposited with one of the big houses in New York had transferred on the 3d of February his deposits or his property or stock to somebody in this country, we should at once investigate to find out whether that property so now held by the person in this country was a bona fide holding or whether it was simply to cover up with temporary protection a German interest.

With that in view, I have drafted the proper amendment, which it is suggested shall be inserted at the end of line 25 on page 9, which reads as follows [reading]:

The Secretary of Commerce may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another.

The CHAIRMAN. You did not attach that to the copy you gave me.

Mr. WARREN. I have spoken of the beginning of that. That beginning is as follows [reading]:

Provided, however, That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

That is Mr. Boston's proviso. I think there should be a separate paragraph beginning, "The Secretary of Commerce may also require a list." It is all run together where it should not be.

Senator VARDAMAN. I want to ask this for my own information: What advantage would there be in the location of these holdings? If the property was transferred to an American under the terms of this bill he could not under any circumstances transfer it to a German or an ally of enemy. Now, I would like to know what is the purpose in your mind. What good is to result from this investigation, except to locate the enemy; or what is it?

Mr. WARREN. It is good in two ways. In the first place, if the transfer is not a bona fide transfer, it will be property which still belongs to the enemy, and under the other provisions of the bill, if the President shall so direct, it can be transferred to the custody of the alien-property custodian.

In the second place, even if we could not prove that it was a fake transfer, it would enable us to understand other transactions made by the transferor, and thereby to prevent his using these funds or this property as a basis for his business.

Under modern methods of business, you see, for a German to continue his business in neutral countries or in Europe or his own country, it is not at all necessary that the property shall be physically

there, whether it is funds or tangible property. It is just as much good to him if he has got so many hundred thousand dollars' worth of cotton in a warehouse in the United States as if he had it in Switzerland or in Germany; or if he has got three or four million dollars' worth of deposits or of stocks in the hands of a broker here, it is just as valuable to him, and he can use it in his business, in the establishment of credits, etc. It would be of high importance to us to locate that fact and be able to so administer this act and the exports control act as to make sure that he was not able to make use of that for the purpose of credit or anything else.

Senator VARDAMAN. The purpose of that was to ascertain your opinion of the advantage to the American Govtrnment in having that information. Now, I want to ask you this further question——

Mr. WARREN. I have drawn it, I think, so as not to make it unduly burdensome upon corporations.

Senator VARDAMAN. I have no objection, and I think the information ought to be had—that it ought to be obtained—if it is going to be of any advantage to us; but is it not also true that this money, if the alien enemy should have it taken over by the Secretary of Commerce, would still be of value in his German business?

Mr. WARREN. No; because you see——

Senator VARDAMAN. It is not the purpose of the United States to confiscate that?

Mr. WARREN. No; it is not. We specifically leave the disposition of that money to the Congress, at the expiration of the war. It is the expectation of everybody I have ever talked with that all this property taken over temporarily will be dealt with in the treaty of peace. No man, however, would be able to get a loan in Germany on property in such a status, i. e., in the hands of the United States Government under such conditions.

Senator VARDAMAN. I see the difference. I think it is prudent.

Mr. WARREN. Both the Secretary of Commerce and the Secretary of State are, perhaps, better fitted to state to you the reasons than I am, but that is, in general, my view of it.

Senator VARDAMAN. I think it is prudent to put it in there.

The CHAIRMAN. I think it is very prudent. They are trying to find out the true state of affairs. If they knew the facts existent on the 3d of February, they could come a good deal nearer finding out the real facts existing.

Mr. WARREN. There was a perfect flood of transactions between that date and the 6th of April.

Senator VARDAMAN. In your investigation have you found that the German people own a great deal of property here?

Mr. WARREN. A great deal; yes. There are very large deposits and funds on hand here, and there is an immense amount of property which has been purchased and stored here, actually paid for; the title passed and the property stored here in warehouses for delivery after the war.

Turning to the balance of subsection (*a*) of section 7 on page 10, I have made an amendment there, in the first place, simply to clarify the language, and, in the second place, I have inserted Mr. Boston's proviso about striking names from the list, and, in the third place, I have added a provision for a similar report of property held on Feb-

ruary 3, 1917. The other referred to stock holdings on February 3. This provides for a report of property then held. The amendment suggested is as follows:

In section 7 (*a*), on page 10, strike out lines 1 to 15 inclusive, and insert [reading]—

Any person in the United States who holds or has or shall hold or have custody or control of any property, beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall under such rules and regulations as the Secretary of Commerce shall prescribe, and within thirty days after the passage of this act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien property custodian by written statement under oath, containing such particulars as said custodian shall require: *Provided*, That the name of any person shall be stricken from the said report by the alien property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy.

The Secretary of Commerce may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February 3, 1917.

The Secretary of Commerce may extend the time for filing the lists or reports required by this section for an additional period not exceeding 90 days.

Section 7(*b*), appearing on pages 10 and 11, is the section that has caused more trouble than all the rest of the bill put together, nearly, and in its present shape is perfectly impossible. It has been made so confused and so illogical by the various amendments made by the House that the only way of dealing with section 7(*b*) is to strike it out and start afresh. The subject matter of this amendment presents the only really essential point on which Mr. Boston addressed you, and he and I are in perfect agreement as to a substitute for this. I have not yet satisfied myself entirely as to the exact wording, and as it requires a great deal of thought I will pass it by to-day. I think that by Monday I can have that in shape. I will merely state the purpose of the original draft of this section without the amendments made by the House. This section and the two amendments to section 2 which I spoke of yesterday are the only parts of the entire bill in which the House made any substantial modification of the original draft of the bill. Every other amendment of the House was either at my suggestion or a matter that had no essential bearing.

The reason for this section 7(*b*) is this—or one of the reasons: In the case of Matthews *v.* McStea, decided in 1870 (91 U. S., 7), referring to the very rudimentary trading-with-the-enemy bill and the proclamation of the President in the Civil War, the court at the very end of its opinion threw in this remark [reading]:

Both the act and the proclamation exhibit a clear implication, that before the first was enacted, and the second was issued, commercial intercourse was not unlawful; that it had been permitted. What need of declaring it should cease if it had ceased or had been unlawful before? The enactment that it should not be permitted after a day then in the future must be considered an implied affirmation that up to that day it was lawful; and certainly Congress had the power to relax any of the ordinary rules of war.

I fancy that to the lawyers of that time that decision must have come as a surprise, and this section is intended to avoid any impli-

cation that in enacting this bill in August, 1917, Congress intends to validate anything that would otherwise have been unlawful since April 6, 1917.

This is subsection (*b*) of section 7. In the language in which it originally stood it was entirely satisfactory to the House committee and to myself, but in its present language it is not. The general lines on which my suggested amendment is drawn will be to provide that nothing in this act shall be deemed to validate any transactions which otherwise have been unlawful since the beginning of the war, and then to make specific provision that all transactions forbidden by the present statute shall be void after the passage of this act. That is to make clear what shall be the prospective, and also the retrospective, effect. You see the necessity of that is very great. The bill, so far as it affects the United States Government, affects it only from the penal standpoint and from the administrative standpoint, but the enactment of the bill will have the much more vital effect of establishing civil rights and liabilities of individuals. Therefore this particular section, so far as the effect upon business transactions and the relations of citizens are concerned, is of quite as much importance as all the rest of the bill. I will submit that amendment on Monday.

The CHAIRMAN. The explanation you have given is sufficient, you think, to go in the record?

Mr. WARREN. Yes.

The CHAIRMAN. In other words, it will not be necessary to hold up the record for further explanations?

Mr. WARREN. Not so far as I see now.

The CHAIRMAN. I mean on that point.

Mr. WARREN. No. Taking up, now, section 7, subsection (*e*), that is the subsection which gives the power to the Secretary of Commerce, on direction of the President, to require transfer of enemy property to the alien property custodian. The amendment which I suggest, in lines 18 to 25, is purely a verbal amendment, clarifying the language. It does not make any substantial change. It is as follows:

Amend section 7, subsection (*c*), by striking out lines 18 to 25, inclusive, on page 11, and the first two words of line 1 of page 12 and insert the following [reading]:

(*c*) If the Secretary of Commerce, by direction of the President, shall so require any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the Secretary of Commerce hereunder which the Secretary of Commerce after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

On page 12, lines 1 to 9 are concerned with the option which is given to a person who is not required by the President to transfer property to the alien property custodian—the option given to such person to turn over that property to the alien property custodian. That is, as a state of war puts an end, ipso facto, to most agencies, dissolves partnerships, makes invalid all commercial transactions, there are many citizens of the United States who should not be burdened with the necessity or the responsibility of retaining enemy property in their possession, and it was felt that it was only fair

that some provision should be made in the bill to relieve them of responsibility; the United States Government, on the other hand, getting the benefit of such relief and the enemy receiving the benefit of the protection and conservation of his property by the Government rather than by a private citizen who has no further interest. You can see the threefold desirability of that provision. That is a provision that has never been included, so far as I know, in any trading with the enemy bill in any country, and it is in line with what I believe to be the enlightened theory of this bill.

The amendment which I suggest deals with an entirely separate subject from the previous portion of subsection (*c*) and should be made a new subsection, (*d*). The only changes in the phraseology that I suggest are merely verbal and in order to make it more precise. There is no other change in lines 1 to 9 except verbal changes.

I suggest now for your consideration a new subsection, (*e*), which is one of the amendments desired by Mr. Boston. It was presented, as I recall, by Mr. Boston's associates to the House committee, and my memory fails me a little on that. I think that I informed the House committee that I saw no objection to it, and it is my impression that the House committee reported it to the House and that it was struck out by the House for some reason. There was practically no debate on much or any of this in the House, and it is my impression that it was struck out, but I do not know for what reason. It reads as follows [reading]:

(*e*) In any case where the Secretary of Commerce shall have reason to believe that the owner or creditor or other person to be benefited by any conveyance, transfer, assignment, or delivery of property or payment of money is an enemy or ally of enemy, he shall have authority to order that, pending investigation of the facts by him, no payment or delivery to any person shall be made.

That is the wording of Mr. Boston's amendment. It is not my wording. In general, I should say that something along that line was a desirable addition to the bill, but I fear that the present wording is too broad. I think the power of the Secretary of Commerce should be restricted. However, I told Mr. Boston I would not oppose it before this committee; but I am not prepared to say that the committee should adopt it in its full breadth.

The CHAIRMAN. Suppose you examine it further and see if you can not make further suggestion. The general idea of it, I think, is wise.

Mr. WARREN. The general idea is wise; and, as I say, I think I concurred before the House committee.

Senator VARDAMAN. Can you recall any case wherein this might not work well?

Mr. WARREN. Well, it is a pretty broad authority, to hold up, pending investigation, any transaction that the Secretary may think is going to benefit an enemy. I do not know whether we should go as far as that or not. I think that something along that line is a good idea, but I think it is too broad as at present worded.

If lines 1 to 9 are to become a new subsection, (*d*), and if this absolutely new subsection (*e*) should be adopted, then the present subsection (*d*) should become subsection (*f*).

The changes which I suggest in lines 14, 15, 16, 17, and 18 on page 12 are simply verbal changes, which make the bill more concise. The

same applies to the changes in lines 2, 4, 7, and 8 on page 13. They are merely verbal changes.

In section 8 the insertions in lines 16 and 19 on page 13 are amendments desired by Mr. Boston, and do not affect the bill in any way. I think they are desirable.

In line 19 on page 13, after the word "property," I suggest that there be inserted the words "in accordance with the laws of the State." I think that would be assumed, anyway, that you could not dispose of pledged property except in accordance with the laws of the State; but some Representative in the House during the debate made some comment on the omission of those words, and I see no objection to their insertion.

In section 8, the amendments suggested by me on page 14 arise from a situation presented to me by Senator Calder.

Lines 13 to 22 on page 14 contain an amendment which Senator Kellogg wished me to consent should be inserted in the bill when the matter was pending before the House Committee. That provides, that in the case where a contract between a United States citizen and an enemy contained a provision for a termination on notice, the notice might be served on the alien property custodian with the same effect as if it were served on the enemy. That was a very desirable and perfectly proper amendment, and I accepted it in the exact language presented by Senator Kellogg, I think.

The CHAIRMAN. These are the words, that you have interlined?

Mr. WARREN. No; these words I have interlined I suggest for your consideration.

The CHAIRMAN. I do not understand, yet, what Senator Kellogg has suggested.

Mr. WARREN. He suggested lines 13 to 22 of page 14, and they were inserted in the bill as it passed the House.

The CHAIRMAN. Oh, those are the words he suggested?

Mr. WARREN. When I say "inserted," I mean that those lines, at the request of Senator Kellogg, were added to the original bill as drafted by our committee. Now, the written interlineations are amendments to Senator Kellogg's amendment, which have been submitted to me by Senator Calder with a memorandum submitted to him in behalf of New York and Chicago banking institutions. As it is very short, I will read it right into the record, because it explains the desirability of these interlined amendments.

This memorandum, which is headed "Memorandum submitted in behalf of the New York and Chicago banking institutions with respect to suggested amendment to section 8," says [reading]:

The reasons for the suggested changes are twofold:

(1) It is an ordinary custom to enter into contracts providing for payments in installments running over a period of time and to secure such payments collateral is pledged. If payment is not made upon the maturity of any single installment this does not terminate the entire contract but gives the pledgee the right to make a demand which, if not satisfied, will place the obligor in default upon that payment. It is to cover these cases that the words "or the accelerated maturity of any obligation provided therein" are suggested for insertion in line 17 of page 14.

(2) Owing to the law merchant it is the belief of banking lawyers that the word "notice," used on page 14, line 17, and following, of H. R. 4960, would not include a "presentation" or "demand" such as is required to create a default in time obligations and in demand obligations, copies of the forms of

which are attached hereto and marked "Exhibit A" and "Exhibit B," respectively.

These forms of obligations are widely used in this country by banking institutions, and it is to cover the presentation and demand necessary to create a default that changes as indicated are suggested.

It should be noted in connection with these suggested changes that section 8 of this bill is not a restrictive but is intended as an enabling provision.

They annex thereto the ordinary form of collateral notes, which contains the provisions to which they refer. In brief, as I understand it, section 8 of the bill contains a provision that if the original contract was terminable upon notice, notice could be given to the alien property custodian with the same effect as if given to the enemy. The amendments suggested broaden that, so that if the original contract was terminable upon demand or presentation, a demand or presentation to the alien property custodian should be the equivalent of such demand or presentation to the alien enemy himself, and have like legal effect. That is right in line, and is simply an amplification of the present provision, and I see no objection to it.

Senator VARDAMAN. I can not imagine why there should be any. Sometimes you might not be able to get hold of the alien enemy.

Mr. WARREN. Yes; the only person who would object would be the enemy.

Senator VARDAMAN. I have here an amendment handed to me by Senator Smith of South Carolina, and I am going to ask you to explain that [handing paper to Mr. Warren].

Mr. WARREN. Curiously enough, Senator, I was just going to take that up in connection with this, because in one of the letters you turned over to me, Mr. Chairman, signed by D. W. Robinson and Thomas J. McLeod, there is a suggestion of the same amendment. I think what I have is a carbon copy of what you have handed me, Senator Vardaman.

Senator VARDAMAN. Very well.

(The matter referred to is here printed in full as follows:)

That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery during hostilities or afterwards, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

Mr. WARREN. That amendment was referred to me by the subcommittee of the House, and the gentlemen who proposed this I think are lawyers from Charleston, S. C.

Senator VARDAMAN. They are from somewhere in South Carolina.

Mr. WARREN. The amendment that they originally drafted was not adequate, and I suggested some changes in it, which they have embodied here, which were absolutely necessary, if the amendment was advisable at all. I told them that I would not agree to the amendment, but that I would not oppose it before the committee; that I did not feel I could agree to it, for this reason, that this bill scrupulously avoids in any way confiscating property.

Now, the proposed amendment provides that where a contract was entered into prior to the war which called for the delivery of property after the war, it might be canceled by the United States citizen. If that contract is a contract which, under the general doctrine of

law, is now in existence anyway, its cancellation, of course, is just as much confiscation of the property of the German as if you took his goods. That is, if he has a good, valid contract now for so many bales of cotton to be delivered in Charleston after the war, if you invalidate the contract, you forfeit the German's property right. That is not in line with the general theory of the bill. On the other hand, if the contract is not now a valid, existing contract, then the provision is entirely unnecessary.

I told these gentlemen that in my opinion under the general doctrine of law a contract entered into which clearly did not contemplate the entrance of the United States into war might become void on the entry of the United States into war. These are contracts which, as they explained to me, were made with German citizens for delivery of property after the European war, not after our war. Under the general doctrine of law as laid down by the Supreme Court in the list of cases which I have given you, Mr. Chairman, and which I suggest should be annexed to my testimony, the effect of the outbreak of war on contracts is double. As to certain classes of contracts, the contract remains in existence; but all rights and remedies are suspended during the term of the war.

As to other classes of contracts, the contract itself is terminated by the outbreak of war.

That second class of contracts is very indefinite, and the courts have never laid down any hard and fast rule by which you could determine whether any given contract was suspended or was absolutely terminated by the outbreak of war. In general, they laid down these lines, that where time is of the essence, the outbreak of war necessarily puts an end to a contract with an enemy. Also the courts state that where conditions arise produced by the war, which substantially vary the conditions under which the contract was entered into, in such case the contract will be terminated by the outbreak of war.

Senator VARDAMAN. Will you state that again, please?

Mr. WARREN. I do not think I stated that very concisely, but it is substantially this: Where the outbreak of war produces conditions which were not contemplated when the contract was entered into and which would so vary the status of the parties that it would be unfair to enforce the contract, then the outbreak of war avoids or terminates the contract.

It seems to me that the class of contracts referred to in the proposed amendment comes directly within the purview of this doctrine of law, that a contract entered into dependent on delivery at the cessation of the European war was so changed by the outbreak of our own war that no court would hold our citizens to comply with its obligations.

Senator VARDAMAN. Here is a case in point. For instance, a citizen of Charleston or of Columbia, S. C., entered into a contract with a broker or cotton manufacturer in Germany to deliver so many bales of cotton after the close of the European war. It is your opinion that the entrance into that war by the United States nullifies that contract?

Mr. WARREN. That is my personal view.

Senator VARDAMAN. The idea, as they expressed it to me, was that if the contract remained in full force and effect, the American citizen

might be able, after the expiration of the war, to carry out his contract at a great loss to himself, but conditions might be so changed in Germany after the war that if it was to the advantage of the American citizen to insist upon the fulfillment of the contract, the German citizen would not be able to carry out his contract, and there would be no remedy for the American citizen; and it was for that purpose that they wanted the right to declare it off.

Mr. WARREN. Yes; I understand that, too. But of course when the statement is made that the German citizen might not be able, it means that the German citizen might not be financially able.

Senator VARDAMAN. Yes; he might not be financially able.

Mr. WARREN. I suppose that is true; we run the risk of the bankruptcy of many German citizens. My opinion is, that kind of contract has already been terminated by our entry into the war. But assume that I am wrong, and the contract is merely suspended, the question presented by this amendment is, Are we going to confiscate the property of that German citizen to the extent of allowing cancellation of the contract? That is purely a question of policy. I do not express my opinion. If the committee thinks that the interests of our citizens so demand, this is a very proper amendment to carry that policy into effect. But the reason I declined to concur in it was that it was an infringement on the general theory of the bill, which was absolutely not to confiscate the property; and the cancellation of the contract, of course, is a taking of property.

Senator VARDAMAN. I can understand that; but I can understand also how the changed conditions by our entering into this war might make it necessary for this Government to protect its own citizens against the misfortunes of the German. He might be forced to keep his cotton and hold it, or he might be compelled to go into the market and buy at a greatly increased value or price; and if it was to the interests of the German, he would insist upon the fulfillment of the contract. If is was not to his interests there would be no remedy for the American citizen to protect himself, and the delivery has been postponed to such an indefinite time that it would probably not be an injustice to the American, really.

Mr. WARREN. The American would lose his profits. But I think you are absolutely correct, Senator, and I can see a certain necessity for it in that respect. If that theory is to be adopted, however, I feel that this bill should go considerably further than this amendment; because, if the fear is that by the prolongation of the war, contracts entered into at the beginning of the war may become injurious to citizens through the financial inability of the Germans to perform, that applies to any contract, it does not apply merely to a contract for the delivery of goods.

Senator VARDAMAN. You know, I earnestly approve your theory. I think that we ought to try to be just and to mitigate the hardships and brutalities of war in dealing with this just as much as we can; but we have obligations to our own people first.

Mr. WARREN. Absolutely.

Senator VARDAMAN. Which we ought to recognize.

Mr. WARREN. Yes.

Senator VARDAMAN. And I can understand how a firm in America, may have agreed to furnish the enemy ally certain things, certain products, having it in mind or in contemplation at the time of enter-

ing into the contract that we would not become involved in the war in a certain length of time; and, since we have become involved in the war, in this country the status of things has changed, and I can see how it would work a great hardship on our people without any possibility of protecting themselves. On the other hand, I should be very much opposed to confiscating anybody's property unless it becomes absolutely necessary; and it has not become necessary up to date.

Mr. WARREN. I can see a great deal to be said in favor of this amendment.

Senator VARDAMAN. That matter was just handed to me.

Senator RANSDELL. It seems to me we ought to have hearings on it if we are going to pass a law. It is very far-reaching.

Mr. WARREN. Yes.

The CHAIRMAN. You will have to have it reach everything and not confine it to what is there. Personally, it does not impress me that this ought to be done, but perhaps it ought. If we are going to take it up, though, let us do it on broad lines. What were you going to observe, Mr. Warren?

Mr. WARREN. I was going to say, incidentally, that I, personally, as a member of the committee in drafting the bill, was very anxious that the Congress of the United States should declare by statute the legal effect of the outbreak of the war upon existing contracts. The situation is most highly unsatisfactory to business men and to lawyers. No one knows what the law is. As gathered from the decisions of the courts and the books, I would defy any lawyer to advise his client on many contracts, whether they were suspended or were entirely abrogated. On some you could advise with safety, but on a large number you could not; and the law is in such a hazy condition as to the effect of the outbreak of the war on contracts that I was very anxious to have the committee frame a declaratory section. I thought that it would benefit the business men of this country enormously to know absolutely what their status was. The doubt and uncertainty are tremendous at the present time and will be so all through this war. No lawyer will be able to advise a client certainly as to whether, as I say, certain contracts are merely suspended or absolutely terminated. However, the rest of the committee felt that that was too big a matter for us to take up.

The CHAIRMAN. I want to know why you gentlemen would not take that up. If you go into it at all you have got to go into it on broad lines. I would not think of going into it in this restricted way. Why would you not go into it?

Mr. WARREN. Simply because they felt that it was too big and important a question, and it might take too long before we could arrive at an agreement, and we wanted to get the bill in. As it was, we spent nearly seven weeks drafting this bill. So I accepted the views of my colleagues on that.

The CHAIRMAN. Can you give us an idea how extensive this thing would have to be?

Mr. WARREN. I would endeavor to take the decisions of the courts of this country and of England and embody in a declaratory section the shortest possible code, stating just what is to be deemed the legal effect of the outbreak of the war upon contracts.

The CHAIRMAN. On contracts in general?

Mr. WARREN. On contracts in general.

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The CHAIRMAN. Not limiting it to any particular thing?

Mr. WARREN. No; I think it would be of the greatest value, but I see the voluminousness of the task, and I think the practical point is that it would probably result in endless debate in the Senate.

The CHAIRMAN. Can you say what that declaratory section would be?

Mr. WARREN. I had drafted a section.

The CHAIRMAN. What would be the effect of the declaratory provision, practically?

Mr. WARREN. I can not give it to you in precise language. It was embodied, in general, in the very rough statement I have made to Senator Vardaman as to what the effect of the court decisions is, but going more into detail than I have been able to here.

The CHAIRMAN. Then in each instance it would take a court to pass upon that and say what is right.

Mr. WARREN. In the present instance.

The CHAIRMAN. I say, even if you made a declaratory provision, it would take a court to say whether a man came under the limitations and restrictions you placed upon that?

Mr. WARREN. Yes.

Senator VARDAMAN. That is true of everything?

Mr. WARREN. Yes; of every provision of law.

Senator VARDAMAN. But, I think, as I said a moment ago, that our citizens ought to be protected. I do not want to do any injustice to the Germans, but my first obligation is to the American.

Mr. WARREN. You do not want to do justice to the Germans at the expense of our own citizens.

Senator VARDAMAN. Yes; that is an even better expression of my own view.

Mr. WARREN. Wherever they are compatible, you want to adjust them?

Senator VARDAMAN. I had a telegram from Mr. Joseph Newberger, a large broker in Memphis, and he wanted to know "where he was at, Mr. Speaker."

Mr. WARREN. I would wager that his counsel could not tell him.

Senator VARDAMAN. No; he could not tell him. I took it up with the State Department and they could not tell me. A committee came to see me with Senator Smith of South Carolina, and handed to me this which I have just given to you, and I suppose other amendments have been submitted. I think that where the doubt exists it ought to be resolved in favor of Americans, and unless we can get some provision of that kind I have no doubt that the representatives of this large concern in Memphis, and probably a great many people in your State, Senator Ransdell, engaged in the cotton business, with similar contracts, will come in and insist that they be given the protection. If there is any way for them to collect from the person with whom they made the contract in Europe—or Germany—if there is any way to safeguard them, it would be a different thing, but they have got all to lose and nothing to gain.

The CHAIRMAN. We can pass a statute nullifying contracts. If we want to do that, I do not say no, but that is what it amounts to; you have got to pass a statute nullifying contracts. Am I right, Mr. Warren; we have got to pass a statute nullifying contracts?

Mr. WARREN. No; it is not necessary to go as far as that, because you may do as is done in this amendment. You can give the citizen the right to nullify the contract.

The CHAIRMAN. I was giving him a right to say whether he will nullify it. I did not make myself clear.

Mr. WARREN. Yes; and we also can provide that it shall be deemed terminated by the outbreak of war ipso facto. There is nothing to prevent Congress from saying that all contracts now existing with German citizens are null and void. Congress has that power.

The CHAIRMAN. Yes; the question is whether we wish to do it. That is a matter that if we are going into I think we ought to have pretty full hearings on and not act on it hastily. It is a matter that surely can not be acted upon hastily. I am entirely willing to do it, if the other members of the committee wish.

Senator VARDAMAN. I think it is a matter in which our people are very much interested.

Mr. WARREN. I have finished section 8. The amendments to section 9, on page 15, we have already considered.

The amendment on page 16, striking out the proviso beginning in line 4 and ending in line 24, we have already considered.

The amendments on pages 17 and 18, striking out lines 8 to 25 on page 17, and 1 to 17 on page 18, we have already considered.

Now, we come to section 10, which is the patent section. That section, as I have already stated, was drawn by the Commissioner of Patents and myself, and I think it is interesting to note that although that affects immensely broad interests and is an absolutely new provision of law and very far-reaching, there was no change made in it in the House, so far as I remember, and no one who has appeared before you has suggested any very substantial changes. There were suggestions of some patent lawyers who wanted provisions made for the payment of fees of lawyers, which I do not object to; but it amused me that that should be about the only change suggested, aside from the change suggested by one of the gentlemen who appeared before you that subsection (*g*) should be stricken out entirely. I think I explained during the previous hearing the reason why we inserted that subsection and why, in my opinion, it should not be omitted. Since then I have heard from various men (one a Congressman), stating that they understood that the move was going to be made to omit that, and strongly protesting against its omission.

The CHAIRMAN. I would say that the arguments of those lawyers did not impress me, that it ought to be stricken out.

Mr. WARREN. I might add to what I said at the prior hearing that if you strike that out then you will leave an American citizen who holds a license under a German-owned patent (as to which no license has been issued by the Federal Trade Commission), and who has to sue in the name of the German owner, without any right to sue in court against any other persons who may be infringing on his rights. I think that would be unwise.

The only amendment that I have to suggest to that whole patent section is on page 20, at the end of line 15, and I will say that, in my opinion, the amendment is entirely unnecessary; but inasmuch as the statement was made there to my great astonishment that in the opinion of those patent lawyers who appeared, the possession of a

license issued by the United States Government would not be a protection to a future suit after the war, for infringement, I have put in an additional sentence to guard against any such interpretation. I can not conceive it to be necessary. I can not conceive that if an enemy sued an American citizen after the war for damages for any act done by virtue of a license from the United States Government, a court would sustain any such suit. To me it is inconceivable that any court should sustain such a suit; is it not so to you, Senator?

Senator VARDAMAN. Yes.

The CHAIRMAN. I think so.

Mr. WARREN. But if your committee felt any doubt about that, this amendment on page 23 would remove any such doubt.

The CHAIRMAN. I expect it would be safer to put it in.

Mr. WARREN. That amendment I should like to submit to the Commissioner of Patents for his suggestion.

The CHAIRMAN. I thought those gentlemen insisted rather strongly on two other amendments. I know they were bitterly opposed to subsection (*g*).

Mr. WARREN. Mr. Metz proposed an amendment which he also proposed before the House committee and which I am very strongly of the opinion should not be adopted.

The CHAIRMAN. We will pass that for the present. I will look it up in the evidence. I am pretty sure they suggested something else.

Mr. WARREN. Now we come to section 11, and I suggest amendments there, on page 25 to strike out lines 24 to 25, both inclusive, and on page 26 strike out lines 1 to 5, both inclusive. The amendment to be inserted is that suggested by Mr. Boston, and which the Secretary of the Treasury spoke of yesterday, which simply increases the power of the alien-property custodian to deal with property coming into his hands. That amendment I thoroughly concur in. As I recall, our war-trade committee drafted the original bill with substantially this amendment. I think somebody raised the point that it might be too broad, and we cut it out. Personally, I thoroughly believe in it. I do not believe the alien-property custodian would be able to carry out his duties efficiently without very full powers. Mr. Boston presented just one illustration, a specific instance where stocks might be in his hands, to which certain stock rights would accrue. He should have power to sell those stock rights before the rights died by expiration of the time limit. It would be for the benefit of the enemy as well as of everybody else, if he had that power. This amendment is as follows:

On page 25, strike out lines 24 to 25, both inclusive, and on page 26, strike out lines 1 to 5, both inclusive, and insert in their place the following (reading):

The alien-property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this act, and, acting under the supervision and direction of the Secretary of Commerce, and under such rules and regulations as said Secretary, with the approval of the President, shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, in like manner as though he were the absolute owner thereof, to the end that the interests of the United States in such property and

rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests, to transfer such shares or certificates upon its, his, or their books into the name of the alien-property custodian upon demand, accompanied by the presentation of the certifications which represent such shares or beneficial interests. The alien-property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

The amendments interlined on page 26 I have already spoken of.

The CHAIRMAN. Before leaving, now, this amendment on page 25, was it that that you and Mr. Boston agreed on? That is correct, is it?

Mr. WARREN. Yes. The amendments interlined on page 26 are only necessary in case you give the Secretary of Commerce power to return property named in section 9; and that covers all that I have to say.

Senator FERNALD. Secretary McAdoo yesterday, I think, made the statement that a lot of the provisions in this bill might be carried out by his department at a very small expense. There is suggested here an appropriation of $250,000. Did he mean by saying "a large part" that more than half the provisions would be turned over to this department?

Mr. WARREN. I can not answer that without expressing some of my own views as to the general proposition of the Secretary. I do not know whether you will care to hear them.

Senator FERNALD. No; it is not necessary.

Mr. WARREN. I was not entirely clear as to the Secretary's views—whether his remarks were addressed to the functions contained in this bill or whether they were addressed to the additional functions he embodied in the very broad, sweeping amendments which he suggests to the bill in the new and additional section. So far as I could understand, most of his remarks yesterday were addressed to the question of control of foreign trade and foreign exchange and exports of gold, and so on.

Senator FERNALD. Yes.

Mr. WARREN. Of course this trading-with-the-enemy bill primarily has nothing to do with the exports of gold and embargo, etc. That would come under the exports-control bill. The only way in which this bill touches foreign exchange or foreign credits is indirectly—that is, if A, an exporter, or A, an importer, wanted to carry through a commercial transaction that was forbidden by the bill, he would have to get a license of the Secretary of Commerce to do it, and as a means of carrying through his transactions it might be necessary for him to buy and sell foreign exchange; but only in that indirect fashion would the subject of foreign exchange be touched at all by this bill. The chief other point, as I recall, made by the Secretary of the Treasury, was the necessity to avoid the possibility that the Secretary of Commerce might make examinations into banks and call for reports or investigate banks, for which the Secretary of the Treasury has full machinery; and he said, very rightly, that all of that could and should be done by his department.

I was interested in what he said, because it never had occurred to our committee that the Secretary of Commerce would ever build up

such an organization, for the readiest and easiest way of getting this information would be, of course, through the Secretary of the Treasury, just as the various departments utilize our Bureau of Special Investigation for information on matters peculiarly within the scope of the Department of Justice. The point raised by the Secretary of the Treasury could be very readily covered by three lines in the shape of a proviso that no reports from, or investigations into, any bank should be conducted except through the Secretary of the Treasury. The amendment consisting of a new section, suggested by the Secretary of the Treasury, is on a purely additional subject and is not a matter about which I could or should express an opinion.

The CHAIRMAN. I will say that in talking with the Secretary of Commerce he told me that the provisions which Mr. McAdoo desired, relating to the financial features of the bill, were entirely agreeable to him and to the President, and he thought they ought to be in here. There was no discussion of this new section.

Mr. WARREN. I will answer, therefore your question as to whether money would be saved by a provision prohibting the Secretary of Commerce from investigating or requiring reports from banks, except through the Secretary of the Treasury, by saying that I should suppose there would be a saving. For carrying out his additional amendment, of course, I would think the Secretary of the Treasury would need as large an appropriation as he asks for.

The CHAIRMAN. He suggested $50,000. I do not know what it was for.

Senator FERNALD. He said he could carry out a very large part of the provisions of this bill with an appropriation not exceeding $50,000, and it seemed that we were proposing to make a much too large appropriation. It does not seem to me that the Secretary of Commerce will need to build up a great organization to carry out this bill.

Mr. WARREN. You see, the license bureau of the Secretary of Commerce will be enormous. It has been in England. Its experience proves that the license feature will be a very important feature, and will necessitate a very large bureau, not only a very large number of men connected with the actual issuing of licenses, but in investigating the facts and conditions as to whether the license should be issued to this, that, and the other person. The mere getting of reports from banks is a very small part of the work.

Senator FERNALD. Yes.

Mr. WARREN. The only other point presented by the Secretary of the Treasury where the question of banking would touch this bill would be in cases where banks held deposits of an alien enemy. The Secretary of the Treasury, in general, believes that he should have the power to require those deposits to be paid over to the Government. I can see some reasons for that. But the bill as now drawn does not allow the Secretary of Commerce to require any enemy property, whether held by banks or by anyone else, to be paid over to the Government, except under the direction of the President, so that I should not suppose, if there were any particular deposits in any bank which the Secretary of Commerce wanted to be paid over to the Government, that the President would give any direction to which the Secretary of the Treasury was opposed.

The CHAIRMAN. He makes a number of suggestions of amendments, and I wish you would take them and go over them and give us your suggestions in regard to them. I judge you are not in position to do that to-day.

Mr. WARREN. No; I am not. I submit the memoranda in regard to this subject which I ask may be printed in the record.

The CHAIRMAN. That will be done. I will turn to you the bill with these amendments suggested by him indicated in it in the form in which it was presented to us.

(The memorandum referred to by Mr. Warren is here printed in full, as follows:)

MEMORANDUM OF AMERICAN JUDICIAL DECISIONS ON THE LAW OF TRADING WITH THE ENEMY.

[By Charles Warren, Assistant Attorney General.]

(1) *Every species of intercourse with the enemy is illegal. The prohibition is not limited to mere commercial intercourse.*

Johnson, J., in *The Rapid* (1814), 8 Cranch, 155, 162, 163:

"Whether this was a trading in the eye of the prize law such as will subject the property to capture.

"The force of the argument on this point depends upon the terms made use of. If by *trading* in prize law was meant that signification of the term which consists in negotiation or contract, this case would certainly not come under the penalties of the rule. But the object, policy, and spirit of the rule is to cut off all communication or actual locomotive intercourse between individuals of the belligerent States. Negotiation or contract has therefore no necessary connection with the offense. *Intercourse* inconsistent with actual *hostility* is the offense against which the operation of the rule is directed, and by substituting this definition for that of *trading with an enemy* an answer is given to this argument."

And see especially Story, J., in *The Julia* (1814), 8 Cranch, 181, 193, 194, 195:

"Nor is there any difference between direct intercourse between the enemy countries and an intercourse through the medium of a neutral port. The latter is as strictly prohibited as the former."

See also Story, J., in *The Julia* (1813), 1 Gallison, 594, 602, 603:

"* * * It would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations. By the war every subject is placed in hostility to the adverse party. He is bound by every effort of his own to assist his own government and to counteract the measures of its enemy. Every aid, therefore, by personal communication or by other intercourse which shall take off the pressure of the war or foster the resources or increase the comforts of the public enemy is strictly inhibited. No contract is considered as valid between enemies, at least so far as to give them a remedy in the courts of either government, and they have, in the language of the civil law, no ability to sustain a *persona standi in judicio*. The ground upon which a trading with the enemy is prohibited is not the criminal intentions of the parties engaged in it or the direct and immediate injury to the State. The principle is extracted for a more enlarged policy, which looks to the general interests of the Nation, which may be sacrificed under the temptation of unlimited intercourse or sold by the cupidity of corrupted avarice."

See also *The St. Lawrence* (1814), 8 Cranch, 434; *The Alexander* (1814), 8 Cranch, 169; *The Rugen* (1816), 1 Wheaton, 62; *United States* v. *Barber* (1815), 9 Cranch, 243; *United States* v. *Sheldon* (1817), 2 Wheaton, 119.

Story, J., in *The Liverpool Packet* (1813), 1 Gallison, 512, 521, 522:

"I look back upon that decision (*The Julia*) without regret, and after much subsequent reflection can not doubt that it has a perfect foundation in the principles of public law. To the many authorities there stated I might have added the pointed language of Sir W. Scott, in the *Jonge Pieter* (4 Rob., 79), that 'without the license of the government *no communication, direct or indirect*, can be carried on with the enemy,' and the rule strongly illustrative of

the principle, which is acknowledged as early as the yearbooks and has received sanction down to the present times, that every contract and engagement made with the enemy pending war is utterly void."

The Lord Wellington (1814), 2 Gallison, 102.

The case of *United States* v. *Barker* (1820, Circ. Ct. N. Y.), 1 Paine, 156, constitutes a departure from the general rule.

The rigid rule was reaffirmed in *Scholefield* v. *Eichelberger* (1883), 7 Pet., 586, 593:

"The doctrine is not at this day to be questioned; that during a state of hostility the citizens of the hostile States are incapable of contracting with each other. For near 20 years this has been acknowledged as the settled doctrine of this court, and in a case which proves it to be a rule of very general and rigid application (*The Rapid*). * * * The question has never yet been examined whether a contract for necessaries, or even for money to enable the individual to get home, would not be enforced, and analogies familiar to the law as well as the influence of the general rule in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present it may be safely affirmed that there is no recognized exception but permission of a State to its own citizen, which is also implied in any treaty stipulation to that effect entered into by the belligerents."

In *Jecker* v. *Montgomery* (1855), 18 How., 110, 112, 119:

"The consequence of this state of hostility is that all intercourse and communication between them is unlawful. * * *

"We have seen, by the authorities cited, that *intercourse with the enemy is sufficient cause for personal punishment and for the confiscation of property; that it is a cause originating in and inflexibly enforced by necessity for guarding the public safety.*"

(2) *Property engaged in illegal intercourse with the enemy is deemed enemy property and is liable to forfeiture.*

The Sally (1814), 8 Cr., 382, 384:

"By the general law of prize, property engaged in an illegal intercourse with the enemy is deemed enemy property. It is of no consequence whether it belong to an ally or to a citizen; the illegal traffic stamps it with the hostile character, and attaches to it all the penal consequences of enemy ownership."

The Rapid (1814, 8 Cr., 155, 162, 163:

"The law of prize is part of the law of nations. In it a hostile character is attached to trade, independently of the character of the trader who pursues or directs it. Condemnation to the use of the captor is equally the fate of the property of the belligerent and of the property found engaged in antineutral trade. But a citizen or ally may be engaged in a hostile trade, and thereby involve his property in the fate of those in whose cause he embarks.

"This liability of the property of a citizen to condemnation as prize of war may be likewise accounted for under other considerations. Everything that issues from a hostile country is, *prima facie*, the property of the enemy, and it is incumbent upon the claimant to support the negative of the proposition. But if the claimant be a citizen or an ally at the same time that he makes out his interest, he confesses the commission of an offense which, under a well-known rule of the civil law, deprives him of his right to prosecute his claim. * * *

"Whether, on the breaking out of a war, the citizen has a right to remove to his own country with his property is a question which we conceive does not arise in this case. This claimant certainly has not a right to leave the United States for the purpose of bringing home his property from an enemy country; much less could he claim it as a right to bring into this country goods the importation of which was expressly prohibited."

See also *The Diana* (1814), 2 Gallison, 93, 97; *Jecker* v. *Montgomery* (1855); 18 How., 110, 114; *The Adula* (1899), 176 U. S., 361, 379, and cases cited.

The Benito Estenger (1900), 176 U. S., 568, 571:

"By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences."

See also *The Carlos F. Roses* (1900), 177 U. S., 655.

Betts, J., in *The Crenshaw* (1861), Blatchford's Prize Cases, 27:

"Not only is property taken trading with the enemy liable to forfeiture, but it is subject to forfeiture as prize of war."

Nelson, J., in *Charge to Grand Jury* (1861), 5 Blatchf., 549; Fed. Cases No. 18271:

"Trade with the enemy * * * according to the law of nations is forbidden and the property engaged in it is liable to forfeiture."

Betts, J., in *The Shark* (1862), Blatchford's Prize Cases, p. 218.

(3) *All persons doing business with the enemy, whether citizens of the United States or citizens of the other belligerent nation or neutrals, are as to their property to be deemed enemies.*

Prize Cases (1862), 2 Black, 674:

"But in defining the meaning of the term 'enemies' property,' we will be led into error if we refer to Fleta and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law.

"Whether property be liable to capture as 'enemies' property' does not in any manner depend on the personal allegiance of the owner. 'It is the illegal traffic that stamps it "as enemies' property." It is of no consequence whether it belongs to an ally or a citizen. (8 Cr., 384.) The owner, *pro hac vice*, is an enemy.' (3 Wash. C. C. R., 183.)

"The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicile of the owner, and much more so if he reside and trade within their territory."

The Flying Scud (1867), 6 Wall., 263, 266:

"Although they are Mexican citizens, yet being established in business in the enemies' country, must be regarded according to settled principles of prize law, as enemies, and their cotton as enemies' property."

See *Juragua Iron Co.* v. *United States* (1909), 212 U. S., 297, 305, 306:

"Cuba, being a part of Spain, was enemy's country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, though an Amrican corporation, doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect to its property found and then used in that country, and such property could be regarded as enemy's property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted."

So in *Young* v. *United States* (1877), 97 U. S., 39, 60:

"All property within enemy territory is in law enemy property just as all persons in the same territory are enemies."

30 Hogsheads of Sugar v. *Boyle* (1815), 9 Cranch, 191.

The Sarah Starr (1861), Blatchford's Prize Cases, 74, 76:

"* * * Loyal citizens or neutrals who * * * have a mercantile domicile in an enemy country are regarded in the prize courts in their commercial dealings and transactions there as enemies in relation to vessels and cargoes owned by them and captured at sea. * * *

"The American authorities are equally explicit that a neutral, even enjoying the privilege of consul, domiciled and trading in a belligerent country, is, in war, deemed a belligerent, and his acts are clothed with the character of one of its subjects; and he can neither hold title to property acquired in such country during war, nor confer it upon others, against the interests imparted, by capture at sea, to adversary belligerents."

The Mary Clinton (1863), Blatchford's Prize Cases, p. 560.

(4) *In general, during war, contracts with, or powers of attorney or agency from, the enemy executed after outbreak of war are illegal and void; contracts entered into with the enemy prior to the war are either suspended or are absolutely terminated; partnerships with an enemy are dissolved; powers of attorney from the enemy, with certain exceptions, lapse; payments to the enemy (except to agents in the United States appointed prior to the war and confirmed since the war) are illegal and void; all rights of an enemy to sue in the courts are suspended.*

The William Bagaley (1866), 5 Wall., 377, 405, 407:

"Public war duly declared or recognized as such by the lawmaking power, imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country."

Hanger v. *Abbott* (1867), 6 Wall., 532, 535:

"War, when duly declared or recognized as such by the war-making power, imports a prohibition to the subjects, or citizens, of all commercial intercourse

and correspondence with citizens or persons domiciled in the enemy country. Upon this principle of public law it is the established rule in all commercial nations that trading with the enemy, except under a Government license, subjects the property to confiscation, or to capture and condemnation.

"Partnership with a foreigner is dissolved by the same event which makes him an alien enemy. * * * Direct consequence of the rule as established in those cases is, that as soon as war is commenced all trading, negotiation, communication, and intercourse between the citizens of one of the belligerents with those of the other without the permission of the Government, is unlawful. No valid contract, therefore, can be made, nor can any promise arise by implication of law, from any transaction with an enemy. Exceptions to the rule are not admitted; and even after the war has terminated the defendant, in an action founded upon a contract made in violation of that prohibition, may set up the illegality of the transaction as a defense. Various attempts, says Mr. Wheaton, have been made to evade the operation of the rule, and to escape its penalties, but they have all been defeated by its inflexible rigor."

Coppell v. *Hall* (1868), 7 Wall., 542, 554, 557, 558:

"When international wars exist all commerce between the countries of the belligerents, unless permitted, is contrary to public policy, and all contracts growing out of such commerce are illegal. Such wars are regarded not as wars of the governments only, but of all the inhabitants of their respective countries. The sovereign may license trade, but in so far as it is done it is a suspension of war and a return to the condition of peace. It is said there can not be, at the same time, war for arms and peace for commerce. The sanction of the sovereign is indispensable for trade. A state of war *ipso facto* forbids it. The government only can relax the rigor of the rule. * * *

"The payment of money by a subject of one of the belligerents, in the country of another, is condemned, and all contracts and securities looking to that end are illegal and void. * * *

"In *Griswold* v. *Waddington* (16 Johnson, 459, 460), Kent, C. J., said: 'The law had put the sting of disability into every kind of voluntary communication and contract with an enemy which is made without the special permission of the Government. There is wisdom and policy, patriotism and safety in this principle, and every relaxation of it tends to corrupt the allegiance of the subject and to prolong the calamities of war.'"

Miller v. *United States* (1870), 11 Wall., 268, 305, 306:

"It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over is owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

United States v. *Lapene* (1873), 17 Wall., 601, 602:

"All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person or indirectly through an agent who is neutral, are illegal and void * * *. No property passes and no rights are acquired under such contracts."

And see also *Mrs. Alexander's Cotton* (1864), 2 Wall., 404; *The Ouachita Cotton* (1867), 1 Wall., 521; *United States* v. *Lane* (1868), 8 Wall., 185, 195; *Dean* v. *Nelson* (1869), 10 Wall., 158; *Lasere* v. *Rochereau* (1873), 17 Wall., 437; *Day* v. *Micou* (1873), 18 Wall., 156; *Mitchell* v. *United States* (1874), 21 Wall., 350; *Fretz* v. *Stover* (1874), 22 Wall., 198; *Mathews* v. *McStea* (1870), 91 U. S., 7, 9, 10; *Desmare* v. *United States* (1876), 93 U. S., 605, 612; *Pike v. Wassell* (1876), 94 U. S., 711; *Conrad* v. *Waples* (1877), 96 U. S., 279, 286; *Burbank* v. *Conrad* (1877), 96 U. S., 291; *United States* v. *Pacific R. R.* (1887), 120 U. S., 227, 233; *Briggs* v. *United States* (1892), 143 U. S., 346, 353; Nelson, J., dissenting in *Prize Cases* (1862), 2 Black, 635, 687.

See also *Kershaw* v. *Kelsey* (1868), 100 Mass., 561, 672; Totter on *Contract During War;* Page on *War and Alien Enemies.*

(5) *Effect of war on contracts previously entered into with the enemy.*

Hanger v. *Abbott* (1867), 6 Wall., 532, 536:

"Executory contracts also with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are dissolved by the declaration of war, which operates for that purpose with a force equivalent to an act of Congress.

"In former times the right to confiscate debts was admitted as an acknowledged doctrine of the law of nations, and in strictness it may still be said to exist, but it may well be considered as a naked and impolitic right, condemned by the enlightened conscience and judgment of modern times. Better opinion is that executed contracts, such as the debt in this case, although existing prior to the war, are not annulled or extinguished, but the remedy is only suspended, which is a necessary conclusion, on account of the inability of an alien enemy to sue or to sustain, in the language of the civilians, *a persona standi in judicio*."

What contracts are merely suspended and what are terminated by a state of war is considered in *New York Ins. Co.* v. *Statham* (1876), 93 U. S., 24, 31, 32, 33, 35:

"The case, therefore, is one in which time is material and of the essence of the contract. * * *

"But the court below bases its decision on the assumption that, when performance of the condition becomes illegal in consequence of the prevalence of public war, it is excused, and forfeiture does not ensue. It supposes the contract to have been suspended during the war, and to have revived with all its force when the war ended. Such a suspension and revival do take place in the case of ordinary debts. But have they ever been known to take place in the case of executory contracts in which time is material? * * *

"The truth is, that the doctrine of the revival of contracts suspended during the war is one based on considerations of equity and justice, and can not be invoked to revive a contract which it would be unjust or inequitable to revive.

"In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. * * *

"We are of opinion, therefore, that an action can not be maintained for the amount assured on a policy of life insurance forfeited, like those in question, by nonpayment of the premium, even though the payment was prevented by the existence of the war. * * *

"* * * Failure being caused by a public war, without the fault of the assured, they are entitled *ex æquo et bono* to recover the equitable value of the policies with interest from the close of the war."

The William Bagaley (1866), 5 Wall., 377, 407:

"* * * Executory contracts with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are *ipso facto* dissolved by the declaration of war, which operates to that end and for that purpose with a force equivalent to that of an act of Congress."

Se also *Gates* v. *Goodloe* (1879), 101 U. S., 612, 619–621; *Lamar* v. *Micou* (1884), 112 U. S., 452, 464; *United States* v. *Dietrich* (1908), 126 Fed., 671, 674.

(6) *As to the effect of war on payment of interest.*

See Trotter on *Contract During War* (supplement), p. 61; Trotter on *Contract During War*, p. 49.

See also *Brown* v. *Hiatts* (1872), 15 Wall., 177, 185; *Hoare* v. *Allen* (1789), 2 Dallas, 102; *Foxcroft* v. *Nagle* (1791), 2 Dallas, 182; *Conn.* v. *Penn.* (1818), 1 Peters C. C., 496, 524; *Ward* v. *Smith* (1868), 7 Wall., 447, 452; Moore *Dig. Int. Law*, vol. 7, p. 252.

See also statement in 22 Cyc., 1562, and 30 American and English Encyc. Law (2d ed.), p. 8. (The statements contained in these last two references do not seem to be in entire accord with the Supreme Court decisions.)

(7) *As to the effect of war on payments to agents of the enemy, and upon appointment of agents, and upon acts performed under power of attorney granted by the enemy prior to war.*

Conn. v. *Penn.* (1818, Circ. Ct. Penn.), 1 Peters C. C., 496, 527, 528; *United States* v. *Grossmeyer* (1869), 9 Wall., 72, 73; *Ward* v. *Smith* (1868), 7 Wall., 447; *University* v. *Finch* (1873), 18 Wall., 106; *Insurance Co.* v. *Davis* (1877), 95 U. S., 425, 429; *Williams* v. *Paine* (1897), 169 U. S., 55, 70, 71.

(8) *As to the power to sue in the courts.*

See *Hanger* v. *Abbott* (1867), 6 Wall., 532, 536, 542; *Caperton* v. *Bowyer* (1871), 14 Wall., 216, 236; *Masterson* v. *Howard* (1873), 18 Wall., 99, 105.

An alien enemy may be sued in the courts of the United States, though he has no right to sue. *McVeigh* v. *United States* (1870), 11 Wall., 259; *University* v. *Finch* (1873), 18 Wall., 106, 111.

(9) *As to power of the Government to license trade with the enemy.*

See especially *United States* v. *Lane* (1868), 8 Wall., 185, 195; *Hamilton* v. *Dillin* (1874), 21 Wall., 73, 97:

"* * * The power of the Government to impose such conditions upon commercial intercourse with an enemy in time of war as it sees fit is undoubted. It is a power which every other government in the world claims and exercises and which belongs to the Government of the United States as incident to the power to declare war and to carry it to a successful termination."

The CHAIRMAN. If there is nothing further now the subcommittee will now adjourn until Monday at 3.30 o'clock p. m.

(After informal discussion, the subcommittee adjourned to meet at 3.30 o'clock p. m. on Monday, July 30, 1917.

STANFORD LIBRARIES

TRADING WITH THE ENEMY.

MONDAY, JULY 30, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled, pursuant to adjournment, at 3.30 o'clock p. m., in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present, Senators Ransdell (chairman), Vardaman, and Fernald.

The CHAIRMAN. The committee will come to order. Mr. McLeod, we will hear you now.

STATEMENT OF HON. THOMAS G. McLEOD, OF SOUTH CAROLINA.

Mr. McLEOD. Mr. Robinson from South Carolina, my colleague, who is with me in this matter, was unable to be here to-day. The amendment we propose is to add this paragraph at the end of section 8, page 13, of H. R. 4960:

> That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States and an enemy or ally of an enemy, the terms of which provide for the delivery, during hostilities or afterwards, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving 30 days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

We have prepared a memorandum on this in writing, which I have here.

Prior to the commencement of the war between Germany and the United States, to wit, in January and February, 1916, various persons and companies in our country who before the opening of the war in Europe in 1914 had been shipping and selling some cotton to citizens and dealers in Germany entered into contracts for the delivery of cotton at the prices named in the contracts—I have the copies here of the contracts, which are open to you gentlemen at any time—at the prices named in the contracts "within 30 days after the German oversea shipping trade be resumed (in particular that of voyage to the east of North America)." Nothing of value passed—the contracts were simply signed and exchanged.

At that time there was no serious consideration by the parties of war arising between Germany and the United States and our sellers expected an early termination of the European conflict.

In order to be able to carry out these contracts it is necessary for the sellers to carry and keep on hand the cotton necessary for their fulfillment or contracts for cotton.

If the contracts are of advantage to the purchasers in Germany or their assignees—and let me add here that, of course, these people in

Germany, even though they may not be in position to enforce them, may assign them to their connections here. If the contracts are of advantage to the purchasers in Germany or their assignees, they will doubtless require their fulfillment at the termination of the war and the burden of carrying them out by our citizens will be inuring to the benefit of the alien enemy. On the other hand, if they should not be advantageous to the German citizen or business man he will doubtless be relieved on his part from fulfilling the contracts by the laws of his or their own nation, or by their insolvency.

It is stated in the report by Mr. Montague, from the House Committee on Interstate and Foreign Commerce, accompanying H. R. 4960, that (reading):

> In sum, war and commerce can not in the nature of things coexist between belligerents. Citizens can not be permitted, directly or indirectly to augment the material resources of the enemy by commercial intercourse, and the necessity for this interdiction is more obvious to-day than at any period of the world's history. Never were the industrial, commercial, and financial resources of belligerent nations so vital to the success of war as now. It is not extravagant to affirm that the effective organization of these resources are more likely to determine the result of the present conflict than armies and navies. Therefore, everything reasonably possibly should be done to prevent our enemy from reaping the advantages of commercial transactions with the people of the United States.

We think the amendment we have suggested is in keeping with the spirit and purpose of the act already before Congress and in line with the suggestion contained in the report thereon.

It may be suggested that under the law such contracts are void without legislation. As to this there is some doubt. The same suggestion would apply to the bill to which this is a proposed amendment, and the answer to such suggestion or objection is, that the necessity for the legislation, for the bill, is likewise the necessity for the amendment.

The report above referred to bases the necessity for the act upon a rule recognized to a considerable extent in this country, that the extent to which contracts and commercial dealings between belligerent countries are abrogated by the war itself is a matter of public policy to be determined by the lawmaking and Executive powers of the country, and this is in a large part the reason for the act now before Congress.

The act as now framed does not cover the cases we mention. Hence if this act is the criterion by which courts will afterwards determine and enforce contracts, our people might be required to carry out their portion of it, but unable to enforce it against the foreign citizen.

The parties to these contracts are patriotic citizens and devoted to the cause of our country. You can readily see that their efforts and resources are hampered by the terms of the contracts into which they have entered and that they are forced to conserve their resources and to so conduct their business as will inure to the benefit of an alien enemy.

The authorities bearing upon the law involved in the general scope of the bill will be found collated in the hearings on the House bill before the Committee on Interstate and Foreign Commerce, pages 32–33.

I wish to add that Mr. Robinson made a brief of these authorities, and subsequently, upon reading the report, found that the authorities

quoted in sustaining the bill were the authorities that we had quoted for the amendment, and therefore is was unnecessary, and you will find them in that report at pages 32 and 33.

Now, some question has been raised, and very naturally, as to whether we are protected without any legislation. This bill becomes, upon its passage, the law as to trade and dealing with the enemy, and the status thereby is left in doubt. In a bill that is intended to clear up the situation as to people who have contracts with citizens of a country with which we are at war; of course, if there is a matter of doubt upon it, the situation to a great extent is not relieved, and their energies and resources still have to be conserved as against the fulfillment of these contracts, and they can not solve any doubt in their own favor, but would have to solve it in favor of the alien enemy, for their own protection.

It has been suggested that the bill is a modification of the hardships engendered by war, and certainly as a modification would to that extent be in favor of the enemy. That may be the result in some cases, but the purpose of the bill, as I gather from the bill itself and as I gathered particularly from Mr. Montague's report from the House committee, is to conserve the interests and resources of America and of American citizens as opposed to the interests of aliens and citizens of foreign countries with which we are now at war.

The CHAIRMAN. Is it not also to mitigate the hardship of the rule of international law by control of relations between enemies?

Mr. MCLEOD. I think so. That mitigation of the hardship would not go to the extent of making it harsh upon our own citizens, and where it is a question between alien citizens and our own citizens, where the hardship has to be placed upon one or the other by reason of a state of war that was unexpected at the time contracts were made, certainly the hardship should devolve upon the alien and not upon the American, because he is necessarily a part of our resources and he has a right to defense by legislation at the hands of the country, and not the alien enemy.

The CHAIRMAN. What do you say as to the well-established rule—as I understand it to be—of international law, that all contracts entered into between parties of different countries are abrogated when we go to war, ipso facto, between the parties?

Mr. MCLEOD. That would apply, certainly, to vested contracts, such as are taken care of in your bill there, but in as much as this is not a vested right but an executory contract, the terms of which are to be fulfilled as stated therein, within 30 days after the war is over, and there is no specially vested right there now, I think that throws considerable doubt about it. I do not mean to say that my people would not endeavor to defend their rights in court, if the worst came to the worst, but they will have lost a great deal of time, energy, and money between this time and that.

The CHAIRMAN. Is it your contention that war immediately suspends the carrying out of a contract when the contract is one to be fulfilled at the close of the war?

Mr. MCLEOD. I am of that opinion. I am frank to say that my information and my associations have not carried me largely into fields of this kind. I am a country lawyer, and of course I have not come very largely into contact with international affairs; but

from such reading as I have done and from such information as I have been able to get I think that is so.

Senator VARDAMAN. Your idea is that a contract of the nature that your clients have entered into with German citizens would, at the conclusion of hostilities between the United States and Germany, be such that your clients would be liable to the Germans?

Mr. McLEOD. I think they would.

Senator VARDAMAN. Did the contract provide for the delivery of the cotton after the war, or——

Mr. McLEOD. I think I can find it in just a few moments, Senator, and give you the exact language of it.

Senator VARDAMAN. It occurs to me that was dealing with an entirely different war from the one we are now waging. The war mentioned there was a war between England and Germany. You need not read that contract. Just let me see it.

The CHAIRMAN. Why do you restrict this amendment to certain forms of contract? You restrict it to anything produced, mined, or manufactured in the United States.

Mr. McLEOD. Outside the payment of money, that covers everything that is likely to be shipped. Outside the payment of money, which is a vested right, those terms, "produced, mined, and manufactured," cover everything.

The CHAIRMAN. Would not the language be a good deal broader and cover your case, as well, perhaps, as some others, if you left out those words, "the terms of which provide for the delivery during hostilities or afterwards, of anything produced, mined, or manufactured in the United States," and just let it read, "That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, may be abrogated by such citizen or corporation, by serving 30 days' notice in writing upon the alien property custodian, of his or its election to abrogate such contract"?

Mr. McLEOD. I was afraid that under the general construction of contracts the conclusion might be drawn, or the inference might be drawn, that that legislation would then apply only to contracts which provide for their fulfillment at or during the time of hostilities. Ours was a peculiar contract. Here is a section of one of these contracts, section 14, which reads as follows (reading):

> 14. The steamer to appear at port of loading within 30 days after the German oversea shipping trade be resumed (in particular that of voyages to the east of North America).

So that, Senator Ransdell, reverting to the question you put, I am afraid it would leave it in the same shape as it is in now if it did not provide as to contracts which were made to be fulfilled afterwards; because you see that the hardship upon us is just as great to conform to the terms of that contract, although it be made to be fulfilled afterwards, as if it was put upon us to fulfill it during the time of the war. If it provided that it was to be fulfilled during the time of the war I think there is no question but what the contract would be abrogated, because we could not be held to do that which it was impossible for us to do. We could not be mulcted in damages for the violation of a contract which the relationships of the country forbade us to fulfill. But now we are not forbidden because of the condition of the country to

fulfill this contract, because peace will have been declared, and in that short time of 30 days after the war has ceased, which is now a war with us and not a war with these other countries as it was at the time of the execution of the contract, we have got to live up to the contract.

The CHAIRMAN. And your great fear is that while our own people will probably be able to fulfill that contract and be in such position that they can be forced to fulfill it, the chances are that the other fellow will not be in condition to comply with his contract and it will be a great burden on our people if we do not pass a law like this?

Mr. MCLEOD. Yes. To use an old term that is proverbial in my country, it is giving the other fellows both ends of the row. They can get out of it, and we can not.

The CHAIRMAN. You have not any information as to what they have done in regard to these contracts?

Mr. MCLEOD. No, sir; we have no very definite information as to anything they have done over there. I do not know of anything that is as scarce a commodity to-day as information concerning what they have done in Germany.

The CHAIRMAN. This amendment is proposed on the ground that it is necessary to fulfill our relations, and that it will hurt others just as badly as it will us if we do not carry out the contract?

Mr. MCLEOD. Yes; and my idea as a citizen is this: On entering into this war the first doctrine that was inculcated in us and that we were asked to preach to the people was that of the conservation of resources. It would put us in a contradictory position to have to be conserving these resources for the benefit of an alien enemy who will need the contract if it is to his advantage, because of his depleted financial condition, and who has all the more motive for getting out of it on account of his depleted financial condition, if it is to his disadvantage.

Senator VARDAMAN. It imposes the obligation upon the American citizen to keep in hand sufficient cotton or wheat, or whatever the article may be, to fulfill that contract within 30 days after the cessation of hostilities.

Mr. MCLEOD. Yes.

Senator VARDAMAN. Now, as you say, if it is profitable to the German to have the contract executed, and to demand of the American citizen that he deliver the goods that he has agreed to deliver, he will demand it. If it is not to his interest to do it, he will simply disregard the contract.

Senator FERNALD. The American is a sure loser.

Senator VARDAMAN. Yes; he is a sure loser; and I can understand how very expensive it would be for a man who wanted to protect his credit to always keep that in mind, not knowing exactly when he would need it for that contract, but knowing that he has got to fulfill the contract. If the contract was made for wheat at $1 a bushel and wheat happened to go up to $2 or $3 a bushel, or if it was made for cotton at 15 cents or 20 cents a pound, and cotton went to 30 cents——

Mr. MCLEOD. He would have to keep that cotton.

Senator VARDAMAN. He would have to keep that cotton, or see where he could lay his hand on it.

Mr. MCLEOD. He has got to keep his hand on the actual cotton, or keep it covered on the exchange. In this case he would have to keep the actual cotton.

Mr. WARREN. But, of course, that same difficulty would have confronted him, even if the United States had not gone into the war. That is, our going into the war may shorten the war instead of lengthen it, and if we had not gone into the war he would have been confronted with the same difficulties as to contracts that he voluntarily entered into. I do not see that our going into the war has increased his difficulties; but believing as I do that our going into the war will shorten it, it seems to me it has decreased his difficulties.

Senator FERNALD. The problem comes in there as to whether the fellow that sold the cotton took into consideration that there were only two or three powers against Germany, and with the expectation——

Senator VARDAMAN. I would like to have your suggestions.

Mr. WARREN. I think that we must bear in mind the fact—which I think is a fact—that our citizens have many contracts of one kind and another with Germany, whereby Germans are to supply us with dyes and chemicals and various essential materials which we received from Germany before the war and which we have not been receiving from her during the war; and of course, as I stated the other day, this clause is to a certain extent a confiscatory clause.

The CHAIRMAN. It is absolutely confiscatory.

Mr. WARREN. It is confiscatory of contract rights. Therefore, I think, we should consider how far similar action on the part of Germany would injure an equal number of our citizens.

Senator FERNALD. It is a serious thought.

Senator VARDAMAN. I think all those contracts are abrogated by the declaration of war.

Mr. WARREN. That is my belief.

Senator VARDAMAN. Then, if that is your belief, I do not know but that it would be a very good thing for Congress to settle that matter, and that would certainly give to the parties to the contracts notice as to what they could certainly depend on.

Mr. WARREN. I think there is a very strong argument to be made on that.

Senator VARDAMAN. I think so.

Mr. WARREN. But I do not ask the committee to take my legal opinion on that point.

Senator VARDAMAN. You are a very good lawyer. The most unfortunate thing for a community is to be living under a law that it does not understand.

Mr. WARREN. To be in doubt.

Senator VARDAMAN. To be in doubt. There is nothing in the world that so interferes with commerce as for a community not to know, to use an expression that found its origin at the other end of the Capitol, just exactly "where it is at."

The CHAIRMAN. Yes. It is a two-sided question. The reason why we are not going to abrogate the patent rights of Germany and other countries with which we are at war is because we would be hurt by it, maybe, worse than they would. Russia has abrogated, according to the best information we have, her patent rights to Germany, and, of course, Germany is getting back at her. Now, if we abrogate these contracts—I am not prepared yet to say how I will vote on it, but if we abrogate them—we must do it with our eyes open.

We must do it with the knowledge that there are many contracts in Germany that would prove to the benefit of our people, and that they will annul them just as we do our contracts with them. I do not think there is any doubt about that principle of general international law stated by Mr. Warren, that the war itself abrogates the contracts between citizens of the warring countries.

Mr. WARREN. Certain classes of contracts; not all contracts.

The CHAIRMAN. Certainly all classes of contracts that are to be carried out during the war.

Mr. WARREN. Yes.

The CHAIRMAN. And that makes a different situation.

Mr. McLEOD. Mr. Warren, will you allow me to say just this in reply to what you have said with reference to contracts with Germany, which, I think, is a very fair matter of consideration; but under the same argument, could not Germans take advantage of the declaration of war to terminate those contracts?

Mr. WARREN. This bill does not abrogate any existing contract.

Mr. McLEOD. I say supposing it did, could not Germany, by international law, declare that those other contracts were abrogated? Take the contracts for dyes; with the tremendous demand there would be on Germany for dyes and the prices offered, would not Germany say that those contracts had been abrogated?

Mr. WARREN. Yes.

Mr. McLEOD. Then I was just thinking that that would not make much difference; that the advantage to us would be offset by the disadvantage through that action of Germany.

The CHAIRMAN. Is there anything else you wish to say, Mr. McLeod?

Mr. McLEOD. I think not. I am quite satisfied that I am not only asking you for special relief; but I am satisfied that the effect of the amendment will be general in its nature.

Mr. WARREN. If there is no objection, Senator, at the opening of my remarks of the other day before this committee I should like to insert in the record a short prefatory statement, setting forth the general intent of this bill.

The CHAIRMAN. That is entirely agreeable to the committee.

STATEMENT OF HON. CHARLES WARREN—Resumed.

Mr. WARREN. Now, taking up the amendment which we have not yet considered—section 7 (*b*), appearing on pages 10 and 11, which was changed by various amendments in the House, and which is not now satisfactory to me, and against which Mr. Boston directed most of his remarks—I recommend that it be entirely stricken out, and that there be substituted therefor a redraft, which I have prepared here, and which is substantially in the shape in which Mr. Boston concurred, and which relieves section 7 (*b*), as it now appears, from the objections raised to it. These objections were that it might make invalid, or attempt to invalidate, certain transactions which had occurred after the outbreak of the war and prior to the passage of this act which would not otherwise have been invalid. It was not the original intent of that section so to do, but I can see how, in its present form, it might be susceptible of such construction. The redraft, therefore, simply provides for three things, and I will read them successively.

The first of this subsection is as follows (reading):

SEC. 7 (*b*). Nothing in this act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for, or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law.

That is simply to provide that by the passage of this act we do not recognize as valid anything which happened before the passage of the act and prior to the outbreak of war which would otherwise have been illegal and void. In other words, that prevents this act from being construed as having any effect except so far as it is specifically set forth in the act. I think that will avoid a great deal of doubt as to what the act is intended to cover.

Then, in order to absolutely clarify the matter as to the civil rights and liabilities of parties engaged in trade, there follows this provision (reading):

No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section 3 hereof, made after the passage of this act and not under license as herein provided, shall confer or create any right or remedy in respect thereof.

That is prospective. No act in violation of section 3 shall confer any right or remedy in respect thereof. That directs itself solely to the civil rights and liabilities.

Then follows a clause which is almost precisely similar to a section contained in the English act (reading):

And no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or of other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay fulfill or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided.

Senator VARDAMAN. That meets an objection that Gov. McLeod made a moment ago, that these contracts might have been assigned.

Mr. WARREN. Yes; that is to cover that, and that is very necessary.

Senator VARDAMAN. I think so.

Mr. WARREN. It is very necessary to cover that. It was contained in the original draft of section 7 (*b*), but in less exact language.

The CHAIRMAN. Have you changed the form of this last proviso in section 7 (*b*) from what it was as it passed the House?

Mr. WARREN. Simply in language and not in effect. It is practically in the same language.

The CHAIRMAN. Yes; I thought it was practically the same.

Mr. WARREN. But the language is a little more precise.

Senator FERNALD. That is in place of this section 7 (*b*).

Mr. WARREN. Section 7 (*b*). The next clause is (reading):

And any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof.

Then there is a proviso which Mr. Boston presented the other day in his printed amendments, and which he recommended in the House committee, in which I concurred and in which I concur now (reading):

Provided, That nothing in this act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally

made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

That proviso, you will recall, covers the point raised by Mr. Boston that, for instance, a mortgage bond or mortgage contract or some other contract might have been assigned prior to the beginning of the war, years ago, and yet the enemy still be, in some States, a legal party in interest, yet having no actual interest remaining in him. I think it is wise to cover such situations.

(At this point Senator Fletcher entered the committee room.)

On Saturday last, you will remember that I presented some amendments to lines 13 to 22 on page 14, in section 8, which Senator Calder asked me to consider and in which I concurred. Those lines, as I stated, were inserted at the request of Senator Kellogg when the bill was presented to the House. Yesterday, after further considering the exact effect of the insertion of Senator Kellogg's amendments, and also these amendments suggested by Senator Calder, I came to the conclusion that they largely overlapped and duplicated the prior portion of section 8, contained in the original draft. The result of this system of tacking on amendment after amendment would be to leave that section 8 in a very ragged condition.

It appeared to me entirely possible to combine the original section and the gist of Senator Kellogg's amendment and also the gist of Senator Calder's amendments in one very concise provision. I would suggest, therefore, that section 8 be stricken out and that there be inserted in its place a new redraft. This redraft contains everything which was in the prior draft, together with Senator Calder's amendments, but simply rearranges it in more concise form. I have a copy for each member of the subcommittee, which I hand you. It reads as follows (reading):

SEC. 8. That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with the laws of the State or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the Secretary of Commerce, with the approval of the President, shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *And provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the Secretary of Commerce pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

That contains in very brief form everything that is in this long, strung-out section, with amendment piled upon amendment.

Senator FLETCHER. Is there anything to show what further order he can make as to property?

Mr. WARREN. Yes, because the surplus will be part of the property of the enemy, and under section 9 (*b*) can be required by the Secretary of Commerce to be paid over to the alien property custodian.

Gov. McLeod's amendment, if adopted by the committee, should be inserted as a subsection of section 8. What I present now should be 8 (*a*), and Gov. McLeod's amendment should be 8 (*b*). That would be the orderly way.

The committee asked me to consider further an amendment suggested by Mr. Boston which, in the draft prepared by me for the committee last Saturday, appeared as section 7 (*e*). That was the subsection giving the Secretary of Commerce power to temporarily order stopping of any payment which he had reason to believe was to be made for or to an enemy. I stated to the committee on Saturday that I concurred in the general idea, but thought that the language was somewhat too broad; that it gave the Secretary too much power. The committee asked me to consider what suggestion I would have to make, and I have prepared the following (reading):

SEC. 7. (e) If the Secretary of Commerce shall have reasonable cause to believe that any payment, conveyance, transfer, assignment, or delivery of money or other property is to be made to, or for, or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, he shall have authority to order the suspension, pending investigation of the facts by him, of such payment, conveyance, transfer, assignment, or delivery for a period not exceeding 30 days.

That will come in after the provisions in section 7 (c) and 7 (d), 7 (c) being the section authorizing the Secretary of Commerce to require property to be paid over, and 7 (d) the section authorizing persons who owe money to an enemy to pay it over, at their option, with the consent of the Secretary of Commerce. My suggested redraft of the Boston amendment 7 (e) allows the Secretary of Commerce to suspend payment or transfer where he shall have reasonable cause to believe that the money is to be paid over to an enemy, but to confine the power to suspend for a period of not more than 30 days. That is, there must be some limitation on the power.

Senator FERNALD. That seems to be a reasonable time.

Mr. WARREN. It might be wise to make it even shorter.

The seventh amendment suggested by Mr. Boston, appearing in his printed amendments, I do not agree to. He wants to add a new subsection to section 7, which would read as follows (reading):

Nothing in this act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States, not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and in contemplation thereof.

Now, the result of that will be that if any German had funds here, received prior to the beginning of the war, and the German had made some arrangement prior to the war that payments out of them should be made to persons over here, such payments may continue to be made after the passage of this act. That would have the effect of removing from the control of the Government those funds; because if payment can be lawfully made out of them, of course the Government would not be able to take them over.

In the second place, every time a German improves his financial status by paying off his obligations, he thereby acquires so much additional credit elsewhere. For instance, suppose a German has here, we will say, $500,000, and suppose an arrangement had been entered into prior to the war that those funds should be paid in a certain way, if we should now, after the passage of this act, allow those funds to be paid, the German has just so much additional credit elsewhere; that is, he has relieved himself of one of his large liabilities here. Whereas, if the Government is allowed to take over that money, it by that amount straitens the German in Germany, because he has his debt still existing in this country, and he has his money in the hands of the United States Government, and he is just so much worse off in his general balance sheet and in his credit elsewhere. For that reason I think it would be highly unwise to adopt this amendment.

Senator VARDAMAN. I agree with you about that, absolutely.

Mr. WARREN. Senator Ransdell has turned over to me a number of letters he has received from various private parties, and also from several Senators, and in order to dispose of them, so that you may have a record if it, I will say that the letter from Lawrence Langer, with respect to section 10, on patents, is already covered by amendments, which I think the committee assented to, proposed by the patent lawyers who appeared here.

A letter from Charles R. Aldrich concerns itself with section 7 (*b*), and the amendment which I suggest to-day absolutely disposes of the comments which he makes.

The same applies to a letter from Davies, Auerbach, and Cornell, which is signed by George T. Hogg, who objected to section 7 (*b*) on much the same grounds on which Mr. Boston objected to it, and it is entirely covered by the amendment suggested by me to-day. This letter was sent to Senator Ransdell by Senator Lodge.

The subject matter of a letter from Alexander & Dowell, patent lawyers of Washington, D. C., is entirely covered by the amendments suggested by the other patent lawyers the other day.

Senator Lodge also transmits a letter from Curtis Nye Smith, 19 Congress Street, Boston, which presents this point: He objects to the fact that an enemy is defined as "any resident within the territory, including that occupied by the military and naval forces, of any nation with which the United States is at war," and he points out that this applies to "Belgian seedsmen and nurserymen, of whom American merchants have purchased supplies and for which they owe the purchase price." That, of course, presents a question which you will at once see raises many difficulties and which I know of no way to deal with except by means of the license system provided for in this bill. We must include within the term "enemy" persons resident on soil occupied by the military and naval forces, otherwise the entire act might be evaded by Germans who were on that soil or by disloyal Belgians or Serbians. So that it is absolutely necessary to make that provision. The only way I know of of avoiding injustice to Belgians or Serbians who want to deal with this country is simply for the Secretary of Commerce to license all such genuine trade with Belgians and Serbians that is not intended to be indirectly for the benefit of the Germans. A license would, of course, not be refused for any trade with Belgians if the business was

straight Belgian business and not German business under a cloak; but to deal with that business by striking out the words "any resident within the territory, including that occupied by the military and naval forces," would simply open up every possible means of evasion.

Senator Lodge also sends a letter from C. Claflin Davis, of Boston, a lawyer, pointing out that he has a client who is an American citizen, whose property consists of American railroad bonds held by a German, residing in Germany, as trustee, and he wants some method devised by which the interest on those bonds can be paid to some Government official for the benefit of the American citizen (his client), who, by the way, resides herself in Switzerland.

Senator VARDAMAN. I do not know that I exactly understand that.

Mr. WARREN. The situation is this: That a German trustee holds some American railroad bonds—holding them in trust for an American citizen—said trustee residing in Germany. Now, of course, in the eye of the law he is the owner of those bonds. The American citizen for whom he is trustee has the beneficial interest.

Senator VARDAMAN. This attorney desires to have the interest paid to him for the American citizen?

Mr. WARREN. He wants to have the interest paid to the alien-property custodian, who shall pay over the income to the beneficiaries in Switzerland—American citizens. But it seems to me there must be a very small amount of property so held, and it is unavoidable. It is one of those hardships that war necessarily brings about. It seems to me hardly right that we should legislate for such a very particular case as that.

Senator VARDAMAN. These are American railroad bonds held by a German as trustee for the benefit of an American citizen who is a resident of Switzerland?

Mr. WARREN. Yes.

Senator VARDAMAN. About the best way for her to get the interest on those bonds would be to have them transferred in the United States, would it not? If the trustee is not beneficially interested in them——

Mr. WARREN. Well, that raises the question whether, wherever a resident of Germany, a German, is a trustee, we are going to invalidate that trust and take over the property and administer it here for the benefit of the beneficiary.

Senator VARDAMAN. No; but I say it seems to me that the best way would be to have those bonds turned over and sent to America.

Mr. WARREN. The railroad, I suppose, sends the interest on the bonds to the trustee in Germany. Now we stop the railroad doing that. But this is another case where the Secretary of Commerce might license it if he thought it was a small matter and did not amount to much and he had proofs that the money was going right out of Germany into Switzerland.

This is the way it would come in: The railroad company would go to the Secretary of Commerce and say "We have a payment to make to a German trustee. Under the terms of this bill it is unlawful, as any payment to a German is unlawful. We ask you to license it, because we show you that while it is going to a German trustee, as a matter of fact it is to be transmitted to an American."

Senator VARDAMAN. If it was a bona fide transaction, if it belonged to an American, there would be no trouble about the woman getting her money.

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Mr. WARREN. No trouble. The facts could be established and the whole thing put through.

Senator VARDAMAN. I do not see why you should have a special act to accomplish that.

Mr. WARREN. The only other letter is by Mr. Clayton J. Heermanee, an attorney of New York, who came up to see me at my office, and who appeared before the House committee, and whose testimony you will find printed there at length. His point is this: He claims that the bill as now drawn makes it unlawful for any American corporation to do business if that American corporation has German stockholders, because, he says, the corporation is thereby doing business indirectly for the benefit of an enemy, and he thinks that the bill therefore renders the business unlawful.

I informed him that I could not in any way see the point; that we had specifically abstained in the bill from attempting to go behind the corporate charter. If the corporation is an American corporation, then it can do business in this country. It can not do an unlawful business any more than an individual can, but it is not an "enemy," no matter how many German stockholders it may have, because the corporation is a corporate body, doing business for itself. When the dividends are declared it may not remit its dividends to its various stockholders; but by doing business in this country it is not doing business for the benefit of an enemy; it is doing business for the benefit of itself.

Senator VARDAMAN. Then whatever profit may be made by the company, belonging to the alien enemy or the alien, is retained in its treasury?

Mr. WARREN. The corporation's business is a perfectly lawful business. I can not see it in any other way. I pointed that out in my letter to Judge Adamson, which appears on pages 96 and 97 of the printed hearings before the House committee.

In England they attempted to go behind the charter of an English corporation, and they attempted to hold that an English corporation, which was controlled by German stockholders, was an enemy within the purview of their act, and they landed in inextricable confusion. I have cited a case in the House of Lords which leaves the whole subject in England in an entirely unsatisfactory condition. Here we have solved that by saying we will not go behind the corporate charter, no matter how many German stockholders there may be, and I think that is a wise policy to adopt.

Senator VARDAMAN. I can not understand the advantage to be derived by this Government going behind a corporation, because whatever money is made by it, whatever profits are made in it, they are retained here until after the war.

Mr. WARREN. They must be retained.

Senator VARDAMAN. They must be retained, and you could not destroy that company or hamper it in any way without interfering materially with the interests of the American stockholders.

Mr. WARREN. Yes; so that the amendment which Mr. Heermance suggests and which is contained in his letter seems to me absolutely unnecessary and inadvisable.

(At this point Senator Ransdell and Senator Fletcher left the committee room.)

There is just one more amendment and then I am done, so far as concerns anything that I have to suggest. This is a matter that

through the Swiss minister in case of any hardship, if the matter is referred to the State Department. Moreover, under the bill as framed, of course such communication was one of the things which, by a general rule, the Secretary of Commerce could license. I want to point out this, that as a matter of fact at the present time, without any law, a German in this country can not communicate with his family in Germany unless he devises some underhand method or agent in a neutral country to receive the letters, since mails to Germany are suspended. The only way he can now communicate is by getting some agent in Norway or Denmark or Sweden or Switzerland under whose cloak he can send his letters. A poor man is not likely to be able to have attorneys and agents in neutral countries through whose agency his letters can be transmitted, so that the present situation does not help the poor man, but does help those who wish to send mail that will injure this Government.

Senator VARDAMAN. Can not that difficulty be met by authorizing in this bill that an American citizen or a person in the German States desiring to communicate with some one in the enemy's country might do so by submitting the communication to the Secretary of Commerce and getting his stamp on it, if he wanted it to go through some European country, as by way of Denmark, and could we not provide to meet that sort of pathetic case?

Mr. WARREN. The bill did originally provide for it, because those letters could be transmitted under the license of the Secretary of Commerce, and he could formulate a general regulation saying that letters, after being duly passed upon by the State Department or the Department of Commerce or the Department of Justice—which ever department might be chosen—might be transmitted in such and such a way. My idea of the way of reaching it is that all proper letters should be transmitted through our United States ministers or consuls in Denmark, Norway, Sweden, or Switzerland, after proper inspection of their contents, and after such delays as might avoid danger to our troops or military or naval plans.

Senator VARDAMAN. I can tell you how that could be done, if it was put in proper form. It seems to me that there are many people, loyal American citizens, who have friends and relatives in Germany and they want to communicate with them. Why could we not provide in this bill for letters of that character to be transmitted through the Secretary of Commerce or through the Department of Commerce, and that the Postmaster General be directed to instruct the postmasters to inform the people living here as to how to do it?

Mr. WARREN. I think that problem could be worked out by an official ruling, in which the whole matter could be taken care of. They have done it in England. I understand that they first prohibited any communication, but afterwards permitted family letters through proper Government supervision. That was my idea of what would happen here with reference to a license of the Secretary of Commerce; that he would prescribe some general rule under which letters of that kind could be submitted to this, that, or the other official and after inspection might be sent on either through one of our diplomatic or consular representatives.

The CHAIRMAN. That is all for the present, the committee will adjourn until August 2, 1917, at 3 o'clock p. m.

(At 6 o'clock p. m., the subcommittee adjourned to meet at 3 o'clock p. m. on Thursday, August 2, 1917.)

TRADING WITH THE ENEMY.

THURSDAY, AUGUST 2, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee reassembled, pursuant to adjournment, at 3 o'clock p. m., in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present, Senators Ransdell (chairman), Vardaman, and Fernald.

Present also Hon. Charles Warren, Assistant Attorney General of the United States; Hon. Milton C. Elliott, general counsel of the Federal Reserve Board; Albert Lee Thurman, Esq., Solicitor of the Department of Commerce, and Mr. F. M. Halstead, Chief of the Division of Customs of the Treasury Department.

The CHAIRMAN. You may proceed, Mr. Thurman.

STATEMENT OF MR. ALBERT LEE THURMAN, SOLICITOR OF THE DEPARTMENT OF COMMERCE—Resumed.

The CHAIRMAN. Mr. Thurman, are you familiar with section 18, the section suggested to be added to the bill by Secretary McAdoo; and, if so, will you please give your understanding of it?

Mr. THURMAN. I have had an opportunity of examining this amendment, Mr. Chairman, and I am very frank to say that I do not understand just what it is intended to cover or just what it is intended to include. It is a matter that it seems to me Judge Elliott could explain—as I understand it was prepared by him—very much better than I could, and I may then have something to say about it hereafter. It does seem to me, however, that in a general way it places exactly the same powers in the Secretary of the Treasury for the enforcement of this bill as it does in the Secretary of Commerce. Ostensibly this section transfers and places the control in the Secretary of the Treasury, for instance, of credits. The Secretary of Commerce, under the provisions of the bill, has the right to grant licenses for trading with an enemy or with an ally of an enemy, as I understand the provisions of the bill. Now, that carries with it, it seems to me, the question of payment. If the Secretary of Commerce is going to prescribe the rules and regulations under which a party may trade with an enemy it would seem that that must necessarily cover the entire transaction, and, therefore, the means of payment. Suppose that this payment is to be made through a bank; then you immediately have the situation where you have the rules and regulations prescribed by the Secretary of Commerce telling a man that he may trade, and then, when he wants to make payment, he goes to the Secretary of the Treasury

and is by him told that he can not complete it. In other words, the effect of this section is to create a double authority or double administrative situation, which ought not to be. I think that the administrative conduct of this bill should be placed either in one department or in the other. I do not believe in having rules and regulations prescribed by both. But, before saying anything further on that——

The CHAIRMAN. You think you would like to have Judge Elliott explain it?

Mr. THURMAN. I think I would like to have him tell what it means before we go any further.

The CHAIRMAN. Then, Judge Elliott, will you explain this section 18, which is very important, and then we can go to the other features introduced by Secretary McAdoo?

STATEMENT OF HON. MILTON C. ELLIOTT, GENERAL COUNSEL OF THE FEDERAL RESERVE BOARD.

Mr. ELLIOTT. My understanding of this is that this bill prohibits trading with the enemy, except with the license of the Secretary of Commerce. It is designed, among other things, to prevent the shipment of property to an enemy or to an ally of an enemy, or the payment of money to an enemy or ally of an enemy.

So far as the shipment of property is concerned, if a resident of the United States undertook to ship to an enemy who was a resident of a billigerent country any property, the jurisdiction and control of that shipment would be entirely in the Secretary of Commerce. He could make his investigation and permit the cargo to go forward or have it turned over to the alien property custodian. So far as commodities are concerned, there is no difficulty or any conflict as between the two departments.

But when we come to the payment of money to an alien enemy, instead of gold being shipped direct to the enemy in all probability it would be paid in a roundabout way, through the use of credits.

For example, suppose a resident of the United States wanted to pay money to somebody, we will say, in Spain, who had an agent in Germany. They would not send the money direct by shipment to Spain, but they might go to a bank in the United States and ask that bank to arrange with its correspondent in France, for example, to accept a draft drawn by the man in Spain. The bank in the United States, through its correspondent guaranteeing the draft, would arrange for the discount of that draft, and that draft might be sold and the proceeds used for any purpose that would be inimical to the United States.

The only way you could ever find out about a transaction of that sort would be, when any of the examiners of the Federal Reserve Board should find a bank opening a large line of credit, he would look into that transaction and see for what purpose the credit was opened.

There would be nothing in the record, so far as the shipment of property or money was concerned, that would indicate in any way that a payment had been made; whereas, on the other hand, if you had access to the banking records, you might find that a bank in the United States was establishing large amounts of credits in France

for drafts drawn by somebody in South America or somewhere else, and you might run down that transaction and find out that that was a roundabout way of paying money to an enemy of the United States.

All that this section undertakes to do is to give power to the Secretary of the Treasury, in addition to the powers that he already has, to examine banks that are under the jurisdiction of the Treasury Department, to examine State banks and other banking institutions that are not members of the Federal Reserve System. If, in the course of that examination, he finds anything that indicates that the bank may be used as a medium for making these payments, he may then go through and require that bank, or its customer, to open all its papers and show why it was opening the credit and what payments it was making. If it developed that payments were being made for purposes inimical to the United States, he could suspend that transaction.

When it comes to gold, gold might be shipped in a cargo to France. That gold might be going to France to pay one of these acceptances that was accepted by a French bank, a draft drawn by somebody in Spain, in South America, or somewhere else, so that there would be nothing in the shipment of the gold itself to indicate that it was a transaction with an enemy. But if it was sent there to pay a credit that was opened in this roundabout way, the shipment in itself might in effect be a payment to the enemy.

If the bank in New York, for example, should say to its branch correspondent, "You will accept the drafts of John Smith of South America, payable 90 days after sight, for $10,000, the credit to be drawn against by Bill Jones of Spain, and we will guarantee payment." At the end of the 90 days, when that draft became due, there might be a shipment of gold to France to pay that draft, but the gold would not be going to France to pay any debt we owed France, or for any commodity we bought from France, but going to pay off a credit established by somebody somewhere else; so that the shipment of gold and the handling of exchange transactions are so closely interrelated that it seemed to us that it would be impossible for the Department of Commerce to trace down one of those transactions unless it went into an examination of the banks itself; because 90 per cent of the transactions, I suppose, would be handled by opening these credits rather than by shipping the gold.

Taking up Mr. Thurman's suggestion that there would be conflict: If this power was given to the Secretary of the Treasury, and the Secretary of Commerce had issued a license to trade with the enemy, I do not think that that conflict would actually arise. To illustrate, suppose the Secretary of the Treasury under his authority had examined into a foreign transaction and found that a New York bank had opened a credit which was indirectly for the benefit of an enemy; if it should develop that that credit was opened under a license from the Secretary of Commerce there would not be any question of conflict, it would stand on the same basis as if it had been opened for some one that was not an enemy. In other words, the license would legalize that transaction and put it on the same basis as if it had been legal without the license.

Mr. THURMAN. Not under this section; it would not as you have it written now.

Mr. ELLIOTT. Just at that point I would like Mr. Thurman to call attention to the language that would prohibit it.

Mr. THURMAN. I think the language beginning in line 20, page 49, of the committee print, which reads [reading]:

to examine, supervise, and control all dealings in foreign exchange.

There is an absolute control vested in the Secretary of the Treasury.

Mr. ELLIOTT. Yes.

Mr. THURMAN. And I think under that, under a regulation he issued, he could veto a license that might have been issued by the Secretary of Commerce when it comes to the matter of payment.

Mr. ELLIOTT. That, of course, is a question of construction which it seems to me would be rather forced, because if we accept that as the meaning of this act we would have to go further and say that no foreign exchange transaction could be engaged in, either with an enemy or with a friend or anybody else, except with the permission of the Secretary of the Treasury.

Mr. THURMAN. Let me go further. On page 50, and reading down onto page 51, you will see he has the power not only to withhold shipments, but to suspend the operation of the transaction.

Mr. ELLIOTT. You refer to this language, which is very plain:

Whenever it shall appear to the Secretary of the Treasury that the export of any gold or silver coin or bullion or of any moneys of the United States or the consummation of any pending transaction in foreign exchange may result in violation of the provisions of this act, he may cause notice to be served on the parties in interest to withhold such shipments or to suspend the consummation of such transaction.

And so forth.

If the license has been issued, that license prescribes that anything which is done is not a violation of the provisions of this act; so that if there was a transaction which would be a violation of the provisions of the act, without the license it could not be a violation of the act if the license has been issued, and if it was not a violation of the provisions of the act no license would be necessary.

Mr. THURMAN. If it is perfectly legal, why place the matter in the hands of the Secretary of the Treasury at all, or vice versa?

Mr. ELLIOTT. I do not think I catch your point, just there. Will you please repeat that?

Mr. THURMAN. If the license is regularly issued by the Secretary of Commerce and the transaction is complete up to the point of payment, if that transaction under the license is absolutely valid, then why put it in the hands of the Secretary of the Treasury? Why should he step in at all?

Mr. ELLIOTT. For this reason, if I may interrupt you to add this——

Mr. THURMAN. Yes; I am trying to get this thing clear.

Mr. ELLIOTT. We are all trying to do that. It is to be supposed that if the Secretary exercises the power prescribed under section 18, the great bulk of the transactions which the examiners will run down will prove not to be violations of law. It will be necessary to examine a great many foreign transactions in order to find the few violations of the trading with the enemy act. Now, if in his examination he finds what might have been a payment to an enemy or ally

of an enemy was in fact a payment to an ally of this country or to a resident of this country, no action is necessary. In other words, no violation of the act has occurred. In other words, if he finds that what might have been a violation of the act in the shape of a payment to an enemy is actually a payment made under a license granted by the Secretary of Commerce, then that transaction has exactly the same status as if he had found that it was not a payment to an enemy. In other words, the mere fact that he may find some transactions which on their surface looked as if they were transactions with enemies but were in fact transactions under authority of a license granted by the Secretary of Commerce, ought not to be——

Mr. THURMAN. If he finds an illegal transaction, why not leave it to the department that has administrative control of the bill instead of placing the authority in another department to handle that situation?

Mr. ELLIOTT. I am trying to answer this the best I can. Suppose that he finds that a credit has been opened through the Bank of France, which is really to pay, indirectly, some debt due an enemy; your question is, Why, instead of issuing directions that that transaction should not be consummated, he should not report it to the Secretary of Commerce and let the Secretary of Commerce take such action as may be necessary.

Mr. THURMAN. Or to whichever department the control is placed in.

Mr. ELLIOTT. That brings up to my mind the real point of this, and that is that it would place the immediate control of bank transactions in the hands of the Department of Commerce instead of the Treasury Department.

Mr. THURMAN. How will it do that?

Mr. ELLIOTT. Because, according to your own suggestion, if he should find that this was a foreign exchange transaction which was in violation of law, instead of exercising the powers of the Treasury Department over the bank transaction he would report it to the Department of Commerce and the Department of Commerce would then have to look into that transaction and make its investigation and determine whether or not it was going to prohibit it.

Mr. WARREN. Just the same way as if he reported it to the Department of Justice. That department would then go into the matter and investigate it. I do not quite catch your point on that, Mr. Elliott, because at some point it is either a crime, or it is a crime about to be consummated. Now, if it is a crime it goes to the Department of Justice, and we go into the banks. If it is a crime about to be consummated, which it is desirable to give power to suspend, of course there is no power given in the bill as drafted—there is nothing to give anybody the power—to suspend the transaction, but if it is desirable to give some power to suspend based on information which the Secretary of the Treasury acquires in his investigation, why should that power—why is there any necessary inconsistency in giving that power to the officer who carries out the whole administration of the bill? I am only seeking for light, because I can not see—if the crime is consummated, the Department of Justice takes the case; we can go in and investigate it.

Mr. ELLIOTT. The section you are discussing is section 18, which gives authority to the Secretary of the Treasury to make this investigation.

Mr. WARREN. And control.

Mr. ELLIOTT. Yes. Now, if I understand your objection——

Mr. WARREN. I am not objecting at all.

Mr. THURMAN. I am not, either. I am just trying to get at it.

Mr. ELLIOTT. If I understand your point, then, there is no objection to the Secretary having this power to make an investigation.

Mr. WARREN. None whatever.

Mr. THURMAN. I think he ought to have it.

Mr. ELLIOTT. But in your view, having made an investigation and having found that a bank is opening credits for an illegal purpose, instead of controlling the situation from that time forward and either reporting it to the Department of Justice for criminal action or further explanation of that transaction, your idea is that all of the information of the Secretary of the Treasury and all the results of his investigation should be turned over to the Secretary of Commerce in order that the Secretary of Commerce should take such action as he thinks necessary.

Mr. THURMAN. In other words, that he revoke the permission or withdraw the license or prevent the transaction.

Mr. ELLIOTT. There may be no question of a license involved whatever.

Mr. WARREN. There may be no question of license.

Mr. ELLIOTT. And in all probability there would not be. Now, to adopt that course with the Treasury Department would be merely to delay for the purpose of enabling the Secretary of Commerce to follow that course.

Mr. WARREN. If it was an illegal proposition it would go to the Department of Justice for such action as might be necessary.

Mr. THURMAN. If it is the other, it is merely to aid and not an adjunct to the Department of Commerce. I do not care whether it is the Department of Commerce or what it is, it is to aid the Department of commerce in the administration of the act.

Senator VARDAMAN. Can you conceive, Mr. Elliott, a question arising under that section 18 where the jurisdiction of the Secretary of Commerce and the Secretary of the Treasury would conflict; part of the transaction would naturally come under the jurisdiction of the Secretary of Commerce while the other would be under the Secretary of the Treasury under that amendment?

Mr. ELLIOTT. I should not think that any conflict would ever arise under this section.

Senator VARDAMAN. Do you not think that for the smooth and efficient working of the bill—of the law—there ought to be as nearly as possible one supreme head, so as to avoid the possibility of those conflicts?

Mr. ELLIOTT. I do, Senator; and that was the purpose of this amendment, to leave the control of purely financial, banking matters, in the hands of the Treasury Department and to avoid the conflict which will arise if the Department of Commerce has to exercise any jurisdiction, either by investigation, examination, or otherwise, over the banks and banking associations.

Mr. THURMAN. That is not the purpose of that. We do not want to do that.

Mr. ELLIOTT. That is the whole purpose of this section.

Mr. THURMAN. Let me ask you a question.

Mr. ELLIOTT. Certainly.

Mr. THURMAN. Suppose a transaction is authorized or licensed by the Secretary of Commerce. That transaction will actually require the receipt of goods and the payment therefor?

Mr. ELLIOTT. Yes.

Mr. THURMAN. Now, suppose the American purchaser desires to make the payment through a bank; where does the authority of the Secretary of Commerce stop and where does the authority of the Secretary of the Treasury begin in a transaction of that sort? I think it is all one.

Mr. ELLIOTT. I will answer that in this way, as I attempted to before, but did not make myself clear: If the Secretary of the Treasury under section 18 investigated the transaction and in the process of that investigation he was advised, or found out, that the transaction was being carried on under the license of the Secretary of Commerce, that would make it, so far as he was concerned, a legal transaction, and he would have no jurisdiction to interfere in it.

Mr. THURMAN. I do not think it does, under this section, as written. That is a question of construction, and I simply present that to the committee. I think the section is so broad that the Secretary of the Treasury will not be controlled by the licenses issued by the Secretary of Commerce.

Mr. ELLIOTT. If you will agree with me that an act done under the license of the Secretary of Commerce is not an act done in violation of the provisions of this act, then I think you must agree with my position that when you find that the act is done under the license of the Secretary of Commerce, the authority of the Secretary of the Treasury ceases.

Mr. THURMAN. That may be all right, but I am trying to avoid the possibility of the Secretary of Commerce or the Secretary of the Treasury or any other Secretary having the administration of this bill licensing the transaction, and then having the Secretary of the Treasury come along when the time comes for payment, and say that the transaction is illegal, and he will not sanction the payment.

Mr. ELLIOTT. There is nothing in this bill which says that the Secretary of the Treasury, when the Secretary of Commerce has granted a license for a transaction, can suspend payment.

Mr. THURMAN. He can suspend the consummation. That is the same thing, is it not?

Mr. ELLIOTT. He can suspend the consummation if it is in violation of this act.

Mr. WARREN. Who is to determine that?

Mr. ELLIOTT. The act itself provides that if the transaction is carried on under the license of the Secretary of Commerce it shall not be in violation of the provisions of this act.

Mr. WARREN. The Secretary of Commerce might suspend or revoke his license at any time. But there is another class of transactions that would not be covered by your proposition. Take the case

of a transaction that was not licensed at all. The Secretary of the Treasury under this provision comes to the conclusion that it is in violation of the provisions of the act, and suspends it. The Secretary of Commerce, on the other hand, having had other transactions with this same person, comes to the conclusion that it is not in violation of the act and he is inclined not to send it over to the Department of Justice, or he is inclined to issue a license on a similar transaction. The difficulty, to my mind, seems to be that you have got two departmental heads deciding whether any given transaction by any given man is or is not in violation of the law.

Mr. ELLIOTT. Just supposing a case where neither the Secretary of the Treasury nor the Secretary of Commerce had acted upon it—a case that comes up anew, as you say—one might hold one way and one the other——

Mr. WARREN. As a matter of fact, the Secretary of the Treasury might not decide whether it was or was not, but he might send over all the facts to the Department of Justice to institute suit if they thought it necessary. I notice that the responsibility is generally laid upon us to decide.

Mr. ELLIOTT. With respect to your suggestion, there again I do not see how any conflict can arise. If a bank on its own account was undertaking to pay money to an alien enemy, it could only do so under the license of the Secretary of the Treasury. On the other hand, if the payment was made by any person other than a bank, the license would come from the Secretary of Commerce. There would be no conflict of jurisdiction, therefore, because it would have to be a bank making the payment in order for the Secretary of the Treasury under this amendment to have anything to do with the license; and if it was not a bank, the Secretary of Commerce would issue the license.

Mr. WARREN. Precisely; but you are looking only at this end of the transaction. Suppose that the Secretary of Commerce has been investigating this same gentleman we are talking of, in Spain, in relation to other transactions that have not anything to do with this particular bank, and suppose he has made up his mind that this Spaniard is all right and is not active in violation of the act, or is not an enemy within the purview of this act, and then comes along a transaction between a bank and this same Spanish subject, and the Secretary of the Treasury makes up his mind that that transaction is in violation of the act, inasmuch as he believes the Spaniard to be an enemy or acting indirectly for an enemy, there is at once a conflict.

Mr. ELLIOTT. You are dealing with the same person, who has transactions with two different people over here; you are dealing with two different transactions.

Mr. WARREN. But the man is the same, and the question is whether he is or is not an enemy. The Secretary of the Treasury may have to decide, between transactions A and B, the question whether he is an alien enemy. The Secretary of the Treasury would decide in connection with transaction X, with this bank over here; the Secretary of Commerce would decide as to a similar transaction Y, with a person not a bank over here. Now, is there not a very great possibility of conflict? In fact, I could hardly think that there would be otherwise than a conflict, because the Secretary of Commerce would

have much greater facilities for investigating your Spanish trader than the Secretary of the Treasury would have.

Mr. ELLIOTT. Do I understand it to be your position that the Secretary of Commerce is to define who are alien enemies under this bill?

Mr. THURMAN. No; the Department of Justice does that.

Mr. WARREN. The courts decide that in the last resort; and the Secretary of Commerce decides it first, in making up his mind whether he will or will not issue or revoke a license. He may refuse a license to A, B, and X, who are not banks; but the decision of the Secretary of the Treasury, which relates to a banking transaction Y, might be entirely different from that of the Secretary of Commerce which relates to those who are not banks.

Mr. ELLIOTT. I understood you to say that the Secretary of Commerce might decide that some person in Spain was not an alien enemy.

Mr. WARREN. And therefore hold a license not to be necessary.

Mr. ELLIOTT. I am not speaking of the license, but the status of the person with whom you deal. Is it not a fact that you provide in the bill what persons shall or shall not be considered alien enemies, and that the license is only issued to those who come within that status?

Mr. WARREN. But somebody has got to decide whether the facts regarding any given person bring him within the definition of an "enemy."

Senator VARDAMAN. Somebody has got to determine the facts. You determine here who an "enemy" is.

Mr. THURMAN. That must be the Secretary of Commerce, subject to submission to the Department of Justice, in case of doubt.

Senator VARDAMAN. In order to make this law efficient there must not be two heads. I do not care which department it is put in the hands of; but so far as we can, I think we ought to shape this bill so as to make one executive head in the enforcement of the law and let the other department of the Government cooperate. If the Secretary of the Treasury has got the machinery with which to acquire certain information that machinery ought to be at the disposal of the Secretary of Commerce, and vice versa.

Mr. ELLIOTT. I think, Senator, speaking for the Secretary of the Treasury—and, by the way, I believe he has written you just exactly his position about the matter—I am quite sure that there is no disposition on his part to have transferred to the Treasury Department any jurisdiction which invades the territory of the Department of Commerce. On the other hand, I feel quite sure that he wants the jurisdiction of the banks and banking matters preserved to the Treasury Department.

I assume that it is because I have been unable to properly explain this section 18 to the committee and these other gentlemen, but I am frank to confess that I can not see any illustration yet that shows any conflict that would arise in the operation of section 18. So long as the jurisdiction of the Secretary of the Treasury is confined to the examination of banks and the control of foreign exchange transactions, which are purely banking matters, and so long as the Secreary of Commerce is left the control of all other matters under the bill, I do not see how or why any conflict is going to arise, and I

submit that the purpose of section 18, and the result of section 18, is not to create but to avoid conflict or jurisdiction. It can not be contended that the Department of Commerce has any jurisdiction over banks and banking, and, as explained by Secretary McAdoo in his statement, any attempt to give another department of the Government a control over the banks or the right to go in and examine a bank, or the right to trace down these transactions, or the right to say that gold shall or shall not be shipped from the country, will inevitably create such a conflict and such confusion in the control of the banks as to result in very serious conflict.

You can not separate the foreign exchange transactions from your gold shipments. If you open credits they have got to be paid, and they have got to be paid ultimately in gold, and that is going to involve the shipment of gold, sooner or later, and in order to adjust the credits, and unless the Secretary is left with his control over those matters, it is going to be an exceedingly difficult matter for the Secretary of the Treasury and the Federal Reserve Board to control the financial matters that have got to be engaged in between this and other countries during this war.

The CHAIRMAN. Why do you give to the Secretary of the Treasury, in section 18, the power of discovery and preventing of violations of section 3 of the act? That is in lines 17 and 18 on page 49. Section 3 seems to relate to a number of things that on the theory of this bill would be given largely to the Secretary of Commerce.

Mr. ELLIOTT. That, of course, relates only to violations of section 3, which are brought about through the use of foreign exchange or shipment of gold. It is confined, of course, to those two things.

Mr. WARREN. Every foreign transaction involves—every shipment out of the country involves, of course—payment either in exchange or in gold?

Mr. ELLIOTT. No; most of them are paid by commodities. If we are shipping goods to Spain and Spain is shipping goods to us, the shipments offset each other, and gold or exchange would be used only to settle the excess one way or the other.

Mr. WARREN. But each specific transaction has to be settled as a specific transaction? The exchange is bought here and the goods are bought there.

(At this point a recess of 10 minutes was taken, to enable the members of the subcommittee to go upon the floor of the Senate, at the expiration of which time the subcommittee resumed its session.)

The CHAIRMAN. Would you like to say anything else about section 18, before Mr. Thurman returns to the onslaught?

Mr. ELLIOTT. I merely want to reiterate what I have attempted to show there.

The CHAIRMAN. Now, Mr. Thurman, in view of what Mr. Elliott has said, what have you to say?

Mr. THURMAN. In the first place, Mr. Chairman and gentlemen, I would like to explain, and have put in the record, the attitude of the Secretary of Commerce in reference to the matter under consideration. He has agreed, not only with the President, but also with Secretary McAdoo, that matters which this committee feels are strictly financial, and relate to finance, under this bill, should be by the bill placed under the control of the Treasury Department, the committee to determine what matters are strictly financial and what

are not. The conclusion of the committee will be perfectly satisfactory to him. In other words, he has no desire to trench in any way, shape, or form upon the prerogatives of the Treasury Department.

The CHAIRMAN. You say "prerogatives of the Treasury Department." You will bear in mind that we are enacting new legislation here.

Mr. THURMAN. Yes; I mean as he now has entire control of the finances, of banks, and so forth.

The CHAIRMAN. Yes.

Mr. THURMAN. This section 18, however, it seems to me creates a divided authority that it is almost impossible to get away from if enacted into law.

Senator VARDAMAN. Which is the section of the bill which does that?

The CHAIRMAN. He says section 18.

Senator VARDAMAN. No: but I mean the part of the section where this would occur; in what section?

Mr. THURMAN. I am coming to that. By this section of the act "the Secretary of the Treasury is authorized and empowered, under such regulations as he may prescribe, to examine, supervise, and control all dealings in foreign exchange."

Take that, if the committee please, and suppose that a transaction contemplating the receipt of goods and the payment by exchange for those goods is licensed by the Secretary of Commerce. That makes the transaction, under the first provision of this bill, perfectly legal. Under this provision the Secretary of the Treasury, having the right to examine, control, and supervise dealings in exchange, would clearly, it seems to me, have the authority to step right in then and there and annul the action of the Secretary of Commerce in issuing the license by refusing permission to make that payment.

Mr. ELLIOTT. May I ask a question there?

Mr. THURMAN. Then, right there, you would have one Secretary authorizing a transaction, and the other Secretary stepping in before it is completed and preventing it.

Mr. ELLIOTT. May I ask Mr. Thurman to cite a concrete case illustrating what he means by a payment being made in exchange for a transaction licensed by the Secretary of Commerce? In other words, I want to see where, in a concrete case, this conflict would arise.

Mr. THURMAN. Well, say a transfer of money through a bank. Under this provision of the bill, after the goods were delivered, could not the Secretary of the Treasury step in and prevent the payment of that money to the seller of the goods, through the bank?

Mr. ELLIOTT. Do I understand that you mean by "foreign exchange" a transfer of money through a bank?

Mr. THURMAN. I will eliminate the exchange. I am not thoroughly acquainted with that matter.

Mr. ELLIOTT. We can not eliminate the question of foreign exchange, because you say it is in the payment by exchange that a conflict is going to arise. I have asked you to give a concrete illustration of how the payment is going to be made by exchange, so that we can see where the conflict is going to arise.

Mr. THURMAN. To be quite frank, I will admit that I do not understand just how that financial transaction would be carried out; but take one that is more simple to my mind.

Mr. ELLIOTT. That is what I want to get.

Mr. THURMAN. Take a transaction where an American concern purchases goods, under a license, from some one abroad. The agreement is that upon delivery of those goods payment is to be made through a bank in money or by a transfer of credit. Now, under this section would not the Secretary of the Treasury have the right to step in and say to the bank that that payment could not be made through that bank?

Mr. ELLIOTT. No, sir.

Mr. THURMAN. Why not?

Mr. ELLIOTT. I will answer that. We will assume that a resident of the United States has purchased hides from a dealer in South America, under a contract that payment is to be made to that South American dealer in London exchange; that is to say, that the American, the citizen of the United States, is to arrange to have a credit opened against which that dealer can draw; and, by way of illustration, that is really what the payment by exchange means, merely that you open a credit in some bank in a foreign country, if it is foreign exchange, against which the seller may draw. Now, if the Secretary of the Treasury in his examination of the banks under section 18 should find that that credit had been opened and it was to be drawn against by that dealer in South America, and he should then be confronted with the fact that that dealer in South America was making that sale under authority of a license of the Secretary of Commerce, that transaction would be just as legal as if the whole transaction had taken place in the United States.

Senator VARDAMAN. Just one point, right there. Does this bill give the Secretary of the Treasury power to suspend that payment?

Mr. ELLIOTT. No, sir.

Mr. THURMAN. That is just the point. I think it does, as it is written.

Mr. ELLIOTT. The section to which you refer reads as follows:

> Whenever it shall appear to the Secretary of the Treasury that the export of any gold or silver coin or bullion or of any moneys of the United States or the consummation of any pending transaction in foreign exchange may result in violation of the provisions of this act, he may cause notice to be served on the parties in interest to withhold such shipment or to suspend the consummation of such transaction.

He may then suspend the consummation, and then only. If the pending transaction is engaged in under authority of the Secretary of Commerce, it can not result in violation of the provisions of this act because the act specifically provides for the licensing.

(At this point a recess of 10 minutes was taken to allow the members of the subcommitee to go upon the floor of the Senate, at the expiration of which time the subcommittee resumed its session.)

Mr. THURMAN. Gentlemen of the committee, I do not agree with Judge Elliott, in the present reading of the bill, that under this section the Secretary of the Treasury would not have the right to overrule any rulings that the Secretary of Commerce might previously have made in the issuance of licenses. It seems to me that as it is now written he could step in at any time and prevent the completion of the transaction by ordering the stoppage of the payment.

Senator Vardaman has offered a suggestion which I think would correct that feature, that these transactions, if carried on under license of the Secretary of Commerce, are legal, and can not be stopped or interfered with by the Secretary of the Treasury. That would cover that phase of it, I think; do you not think so, Mr. Warren?

Mr. WARREN. That particular phase; yes.

Mr. THURMAN. The other phase suggested by Mr. Warren is the case where no licenses are issued. Then you have a situation where unquestionably the Secretary of Commerce may not think a license is necessary, and you immediately vest the power in the Secretary of the Treasury to say that a license is necessary.

Mr. ELLIOTT. May I interrupt you again to ask that you cite a concrete case where that could arise.

Mr. THURMAN. Yes. Suppose that the Secretary of Commerce should decide that an individual is not an enemy or ally of an enemy, and the transfer is proceeding. Under this bill, could not the Secretary of the Treasury immediately declare such person, in his opinion, to be an enemy or ally of an enemy and order such transaction stopped? Could he not do that?

Mr. ELLIOTT. He could not, as I read the bill.

Mr. THURMAN. Why not?

Mr. ELLIOTT. Because the only power vested in anybody to fix the status of a person is that vested in the President.

Mr. THURMAN. Then, under what authority has anybody the right to suspend any transaction and issue or revoke any license? Who is to determine that?

Mr. ELLIOTT. If the status of a person with whom a trade or transaction is to be carried on under the language of the act—which is very specific—is that of an enemy, then no person can deal with that enemy except under license of the Secretary of Commerce.

Mr. THURMAN. Yes; who determines then and there, does he not, whether that person, when he issues a license, is an enemy or ally of an enemy.

Mr. ELLIOTT. There is absolutely no discretion vested in the Secretary of Commerce to determine the status of a person as an enemy or not as an enemy. If he is an enemy, under the language of the act, then, and then only, the Secretary of Commerce can give a license.

Mr. THURMAN. Yes; go ahead.

Senator VARDAMAN. Just take the bill and read the definition. Let us see who is made an enemy.

Mr. ELLIOTT. The bill says, in section 2 [reading]:

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war, or incorporated within any country other than the United States and doing business within such territory.

Mr. WARREN. Would not the Secretary of Commerce be obliged to decide in any given case whether a man was resident in or resident outside and was or was not doing business within Germany?

Senator VARDAMAN. That is it.

Mr. ELLIOTT. Exactly. He has no discretion in the matter, but he merely determines whether he is a resident of a country with which the United States is at war.

Mr. THURMAN. Can you not conceive, under the provisions, that the Secretary of Commerce, acting on information he might have in regard to an individual, would say that a license was not necessary to that man, because he did not come within the definition, and that the Secretary of the Treasury might turn right around and say that he did come within it?

Mr. ELLIOTT. I can not.

Mr. THURMAN. I can, very easily.

Mr. ELLIOTT. Would you mind giving me an illustration of when he might?

Mr. THURMAN. A person might apply to the Secretary of Commerce for a license to deal with a certain individual. The Secretary of Commerce might say that that man was not an enemy or was not an ally of an enemy; that he did not come within the definition prescribed by the bill, from the information and knowledge which he had. Now, the Secretary of the Treasury might think that he had other information and knowledge, and say that the man did.

Mr. ELLIOTT. Just taking up your illustration, you say that he might apply for license to trade with a certain individual. Located where?

Mr. THURMAN. Located anywhere—abroad.

Mr. ELLIOTT. Would not his application have to say that the individual with whom he wanted to deal was located in the territory of a country with which the United States was at war?

Mr. THURMAN. It would have to comply with the provisions of the bill.

Mr. WARREN. Or in any outside country, and doing business within the enemy country.

Mr. THURMAN. If the Secretary of the Treasury had information to show that the facts were such that the Secretary of Commerce should have issued a license, then and then only the Secretary of the Treasury might step in and say, "In my opinion this man is an enemy or an ally of an enemy, and a license is required"; and there you would have a conflict, right off. I do not mean to say that he would do it, but under the provisions of the bill as it is written he has the right and he might do it.

Mr. ELLIOTT. I still fail to see, if the status is fixed by statute and there is no discretion except in the President of the United States, and there is no discretion under the language of the act as to anyone except those who come specifically within the terms of the act, how you can say——

Senator VARDAMAN. Some one has to ascertain the facts that he is an alien enemy and is in another country doing business. Who is to ascertain those facts. It is the Secretary of Commerce or the Secretary of the Treasury, is it not?

Mr. ELLIOTT. In granting the license, as a condition of granting the license it would have to appear——

Senator VARDAMAN. But suppose no license is granted? Suppose that the Secretary of Commerce concludes that no license should be

granted, and suppose that the Secretary of the Treasury should conclude from his investigation that a license is necessary?

Mr. ELLIOTT. That illustrates the point that I am very glad you brought out. The Secretary of the Treasury would have no jurisdiction in the matter at all unless the person involved was a bank or banking association, and the Secretary of Commerce would have jurisdiction over all other persons.

Mr. THURMAN. Suppose the operation was conducted through a bank?

Mr. ELLIOTT. Just a moment; let me finish this.

Mr. THURMAN. Certainly.

Mr. ELLIOTT. Therefore there could not be any conflict as to the status of an individual, because they would not have jurisdiction over the same individuals. In other words, the Secretary might conclude that a bank was dealing with an enemy, or the Secretary of Commerce might conclude that any other person was dealing with an enemy. If the license was issued to any one under the provisions of this bill it would be issued by the Secretary of Commerce if it was to anybody else than a bank. It would be issued by the Secretary of the Treasury only in case it was a bank. So there could not be any conflict as to the question of the person to whom the license was given.

Senator VARDAMAN. Look at that a moment and see if that distinction is made.

Mr. ELLIOTT. Yes; and it is brought out all through the act, also.

The amendment to section 5, page 12 of the committee reprint, reads [reading]:

SEC. 5. That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this act in whole or in part so far as they apply to an ally of enemy; and the Secretary of the Treasury may, under direction of the President, grant licenses under this act, special or general, to any bank, and the Secretary of Commerce may, under direction of the President, grant licenses under this act, special or general, to any other person or class of persons—

And so forth.

The persons to whom the licenses are granted are specifically defined and separated, so that there can not be any conflict as to the Secretary of the Treasury overruling the Secretary of Commerce, or vice versa.

Mr. THURMAN. Yes; but take the other situation, Judge Elliott, the one where the Secretary of Commerce decides that a license is not necessary, and the transaction then goes ahead. Now, I ask you the qustion, under the provisions of section 18, in a case of that kind can the Secretary of the Treasury not step in before the transaction is completed and the payment made, and say, "In my opinion the party to whom this payment is going is an enemy or an ally of an enemy, and a license must be had?"

Mr. ELLIOTT. No, sir; he can not.

Mr. THURMAN. Why not?

Mr. ELLIOTT. You are presupposing that a license is granted to an enemy.

Mr. THURMAN. No; I am not presupposing anything in this case.

Mr. ELLIOTT. I understood you to say, if the Secretary of Commerce had granted a license.

Mr. THURMAN. No; if a transaction is proposed and is submitted to the Secretary of Commerce and he decides that no license is necessary.

Mr. ELLIOTT. Just let us take that. Then the Secretary of the Treasury would have nothing on earth to do with that unless the person dealing was a bank, in which case the Secretary of Commerce would have no authority in the first instance to decide whether the person was an enemy or not.

Mr. THURMAN. Now, then, if the payment went through a bank, would not the transaction be interrupted right in the middle by the Secretary of the Treasury?

Mr. ELLIOTT. It would not. If the payment was made in connection with a transaction in which the Secretary of Commerce had issued a license, it would not constitute a violation of the act, and therefore the Secretary would have no power to do anything at all in the matter.

Mr. THURMAN. Therefore the question of license, so far as the Department of Commerce is concerned, in the case I have assumed, does not figure at all.

Mr. ELLIOTT. State your concrete case and I will be able to consider it.

Mr. THURMAN. A case is presented to the Secretary of Commerce, and the question is as to whether a license is required or not required.

Mr. WARREN. By a merchant.

Mr. THURMAN. By a merchant.

Mr. WARREN. Who wishes to buy goods in Spain.

Mr. THURMAN. And the Secretary of Commerce decides that a license is not necessary under the provisions of this act; in other words, that the transaction may be carried on under this act. Now, part of that transaction contemplates the payment of money by the American merchant to the party from whom he purchases the goods—a payment through a bank. Under section 18 as it is written can not the Secretary of the Treasury arbitrarily decide that a license in the first instance should have been required and prevent the payment, or payment through the bank, thereby interrupting the transaction right there, before it is completed? In other words, would not the Secretary of Commerce be in the position of saying that no license is required, and the Secretary of the Treasury then come along and says that one is required?

Mr. WARREN. Say that it was a violation of the act and therefore suspend it?

Mr. THURMAN. Yes.

The CHAIRMAN. Does section 18 nullify section 5?

Mr. THURMAN. Exactly.

Mr. ELLIOTT. No, sir.

The CHAIRMAN. But is not that the effect of it?

Mr. ELLIOTT. I do not see where there is any conflict between section 18 and section 5.

Senator VARDAMAN. Just a moment. Section 18 reads [reading]:

SEC. 18. That, for the purpose of supervising and controlling foreign exchanges and the export of gold or silver coin or bullion or of any moneys of the United States and of discovery and preventing violations of section three of this act, the Secretary of the Treasury is authorized and empowered, under such regulations as he may prescribe, to examine, supervise, and control all

dealings in foreign exchange, transfers of credits in any form (other than credits relating solely to transactions to be executed wholly within the United States), and to supervise and control exports of gold or silver coin or bullion.

And so forth.

He has jurisdiction of every matter, whether it be a transaction of the bank or not, if it is done by a merchant through the bank. Does not this section give him absolute control of it?

Mr. ELLIOTT. I think not, Senator. I do not think that this would give the Secretary of the Treasury any power, for example, to declare an embargo on gold or to say that no transaction in foreign exchange could be engaged in, because if you will read the rest of the section you will find that while he makes these investigations he can only take action when, as the result of such investigation, he finds that the act will be violated, under that section, if the transaction is concluded; so that it does not vest in the Secretary power to suspend a legitimate transaction.

Senator VARDAMAN. Does it not vest in him the power to determine whether it is legitimate or not?

Mr. ELLIOTT. It vests in him the power only to suspend a foreign exchange transaction if, in his opinion——

Senator VARDAMAN. Now, that is one of the transactions that comes under the jurisdiction of the Secretary of Commerce, through a bank. Of course he has not power to suspend an entirely legitimate and regular transaction, but he has power under this section to determine the fact whether it is legitimate or not. There is where the conflict comes in, it occurs to me.

Mr. ELLIOTT. The power of the Secretary of the Treasury extends only so far as to determine whether or not the completion of a transaction in foreign exchange, or a shipment of gold, is going to result in a violation of the act. If it does result in a violation of the act, neither the Department of Commerce nor the Secretary of the Treasury has any jurisdiction. It then devolves upon the Department of Justice to prosecute any violation of the act. If he finds out that if a transaction is allowed to be completed it will result in a violation of the act, he can then serve notice on the bank, "Now, if you go ahead with this you will be liable to prosecution," and if the bank disregards his warning, then the Department of Justice steps in and prosecutes the bank for violation of the act. But it does not vest in the Secretary of the Treasury the powers of the Department of Justice, nor does it vest in the Secretary of Commerce the powers of the Department of Justice. I was surprised to hear the suggestion made that the Secretary of Commerce has the final authority to determine whether or not a transaction is a violation of the provisions of this act. He says that somebody may go to the Secretary of Commerce and say, "I want to ship these goods," or "I want to pay this money to somebody located over in Germany," and if the Secretary of Commerce says, "Go ahead and do that; that is no violation of the act," that gives him immunity. The only way on earth that the Secretary of Commerce can give immunity is by licensing, and if he does not give a license then it is for the courts to determine whether any transaction is a violation of the act. I am very much surprised to hear it even suggested that a part of the duty of the Secretary of Commerce is to sit up and say, "I will not give you a

license for that, but you can go ahead and do it." If that is the purpose of the act, you might as well abolish the courts.

Mr. WARREN. He might arrive at a different decision on the same state of facts from the decision which the Secretary of the Treasury might arrive at. That would evidently lead to conflict.

Mr. ELLIOTT. Do you think any conflict could arise because the Secretary of Commerce might express the opinion, "This will not constitute a violation of the act if you go ahead and do it," and it might subsequently be decided by the Department of Justice that it did constitute a violation of the act, and you go ahead and prosecute?

Mr. WARREN. Yes; but it is not merely a question of possible conflict between two governmental officers. You might have conflict between two citizens of the United States in exactly the same way. I will give you a concrete illustration: Suppose A and B are both dealing with X in grain, and A has to consummate his transaction by going to a bank. B does not have to consummate his transaction by going to a bank. Both A and B go to the Secretary of Commerce when they enter into their transactions and the Secretary of Commerce says to each: "X, in Spain is all right. You do not need a license." B, therefore, consummates his transaction, not through a bank, and nothing happens to him. A attempts to consummate his transaction through a bank, and the Secretary of the Treasury says: "I differ with the Secretary of Commerce. I think the transaction should have required a license, and is therefore now a violation of law, and I will turn it over to the Department of Justice." Now, there are two citizens who go to two different governmental officers and get two different opinions. That might be a serious situation.

Mr. ELLIOTT. Suppose that A consummates his transaction and the Department of Justice itself determines that it does violate the act. As a matter of fact, is it the custom of the Department of Justice or any other department to undertake to prejudge a case of that kind?

Mr. WARREN. On a question of fact, we very generally follow the decisions of the different departments. For instance, we may think that a thing is illegal, but if we find that a given department has ruled, on the facts, that it is not, as a matter of comity with the department we do not necessarily differ with them.

Senator VARDAMAN. Now, I am going to take that same illustration that Mr. Warren has just made. We will say that the Secretary of Commerce investigates the transaction of the man who does not happen to go to the bank. He thinks that the man in Spain is all right, and a license is not necessary. Subsequently the same man comes back—or another—and he has to go to a bank. Evidence is brought to the attention of the Secretary of Commerce that this man in Spain is not all right, or that probably he needs a license. It would be perfectly proper for the Secretary of Commerce to require that license, but the thing about it is that, for the efficient enforcement of the law, it seems to me that authority ought to be vested in one supreme head, to prevent—I can understand how the cases mentioned would bring about the same state of facts—the conflict of authority. Now, I do not think anybody can hope for a smooth, efficient, proper enforcement of the law where the authority is divided, as it would necessarily be in that case you just mentioned.

Mr. ELLIOTT. May I answer your suggestion right there?

Senator VARDAMAN. Certainly; I am desirous of getting light myself.

Mr. ELLIOTT. That is what we are all trying to do. I think we have all gotten some distance from the point of the matter. The Constitution of the United States determines the question of what department has authority to decide whether the act has been violated. That is vested in the courts of the United States, and no ruling of the Department of Commerce or the Treasury Department, or even of the Department of Justice, would affect any individual who was indicted for violation of the provisions of this act. He might have gone to the Attorney General, and the Attorney General himself might have said to him, "If you do this act it will not constitute a violation of the law." That opinion of the Attorney General himself would not bind the courts. So that the administrative officials will not undertake, and do not undertake, to say whether an act is a violation of the law. In that respect, I have been trying since the passage of the Federal reserve act to get a ruling from the Department of Justice as to what constitutes violation of the act, section 32, as to certain directors.

If the question is a close one, the Department of Commerce would issue a license, and if it was not a close one they would not come and ask. In other words, if they were going to deal with an individual in enemy territory, if they went to the Department of Commerce, it is inconceivable to me that the Secretary of Commerce would say, "That deal is with a resident in Germany and living there, but you do not need any license in that case." In other words, the only time when the question would be raised would be when some one wanted to trade with an individual whose status is fixed by the act, who is a resident of Germany or some other country with which we are at war; and then they would come to the Department of Commerce and present the facts and they would get a license. If the license is granted, that makes the transaction legal, and neither the Secretary of the Treasury nor any one else could stop it; and all this assumption that the Secretary of the Treasury or the Secretary of Commerce is going to be expressing opinions to individuals that they can trade with the enemy without violation of the act is not based, certainly, on the practice of the Government, because I have tried often enough myself to get opinions from administrative officials when I have been unable to do so.

Senator VARDAMAN. But the point is that the administration of the laws of this country is not held up until the Supreme Court, the final arbiter or tribunal that determines whether the law is a law or not, passes upon it. These men in these offices mentioned under this statute are named to execute the laws, and they may go ahead and violate them and the Supreme Court may finally say, "You are wrong." But if you had to wait for every question to be adjudicated, you would never get anywhere; and what we want to do now is to prevent a conflict between two officers in the enforcement of the law before the matter has been interpreted by the Supreme Court.

Mr. WARREN. Let me give you another illustration: During the past four months, the Department of Commerce, the State Department, and the Department of Justice have been flooded with commu-

nications on this subject. The law now being that you can not deal with an enemy, we have been flooded with requests from business men all over the country asking questions like, "Is X, down in Argentina, an enemy, or is he dealing indirectly with an enemy"? "Would trade with X be indirectly trade with Germany"? Of course we have had to say, that pending the passage of the bill, we are not going to answer any questions.

After the bill is passed, all those men would go to the Department of Commerce and they would necessarily apply for a license; they are going to try to get some information. They want to do business fairly, and they might say, now, "Is X an enemy within the purview of this act"? but "We know he is not an enemy within the purview of the act, but the act makes it illegal to deal directly or indirectly with an enemy. Now, we want to know, when we deal with X, are we dealing indirectly with an enemy." Well, the Secretary of Commerce has got a lot of information about X, and he says, "Why, gentlemen, so far as I know, from all the information I have, X is all right; go ahead, at your own risk, however, of course."

Now, having gotten that information and gone ahead and dealt with X, I go to the bank to buy some exchange, and the Secretary of the Treasury, looking into the affair, says, "Well, I believe that X down in Argentina is dealing indirectly for a German. Therefore, this payment to X is going to be in violation of the provisions of this act. That is my opinion, and therefore I am going to order you to suspend the consummation of that transaction." That is a perfectly possible case; and not only a possible case, but more than probable.

Mr. ELLIOTT. May I ask you a question on that?

Mr. WARREN. Yes.

Mr. ELLIOTT. If any administration official is going to determine in advance of a consideration of the facts that a transaction is or is not a violation of the act, does not that bring a direct conflict between that department and the Department of Justice?

Mr. WARREN. No. The case I put was that the Secretary of Commerce says, "You have got to take your own risk. We have looked this man up, and so far as we know he is all right."

Mr. THURMAN. It is not a conflict with the Department of Justice. Let me call your attention to this. I do not know whether you are familiar with the decisions which run into the hundreds rendered by the legal officers of the Department of Commerce regarding the seamen's law, many of which never went to the Department of Justice at all, and the department is operating under these constructions of the seamen's act to-day.

Mr. ELLIOTT. The Secretary of Commerce says to this applicant, "I have looked into the matter of X, and so far as I know he is all right. You are safe in going right along." In the meantime you and your agents have determined that X is shipping munitions of war to an enemy, and as the result of that investigation you determine to have him indicted. Do you mean to say that that rule of the Secretary of Commerce is going to give him any immunity at all?

Mr. WARREN. Surely not.

Mr. ELLIOTT. Has it any effect in that way, at all?

Mr. WARREN. Surely not.

Mr. ELLIOTT. Is there any occasion for conflict arising so long as the law is administered in conformity with the provisions of the act?

Mr. WARREN. Yes; but if we have two department heads deciding in two ways on the same man there is considerable embarrassment to us. But I am not considering so much the embarrassment to the Government officials as the embarrassment to the two American citizens who might receive two entirely different rulings. If they were going to carry out their transactions one way, through a bank, they might get one ruling, and if some other way and not through a bank, they might get another ruling.

Mr. ELLIOTT. If you construe this act to mean that the Secretary of Commerce is to determine what are and what are not violations of this act, and the courts are not to be used in this matter, I am entirely in——

The CHAIRMAN. I did not get that, Judge.

Mr. ELLIOTT. I say, if the construction to be placed upon this act is that the duty devolves upon the Secretary of Commerce to determine what are and what are not violations of this act, then I am on an entirely false basis, because my understanding has been all along that the courts are given jurisdiction to determine that question, and that no administrative official is permitted or authorized or empowered in any way to determine whether or not a transaction will or will not constitute a violation of this act. The only authority vested in an administrative official in this connection is that he may legalize the act by granting a license, if upon presentation of the facts it appears that a transaction is about to be engaged in that would otherwise constitute a violation of the act.

As already pointed out, if the application is made by anybody else than a bank the license is granted by the Secretary of Commerce, and if an application is made by a bank it is granted by the Secretary of the Treasury, so that, so far as conflict in administrative duties is concerned, there is no conflict. And, taking their own illustration, no conflict should arise except in a case where the Secretary of Commerce or the Secretary of the Treasury undertook to invade the province of the courts and determine in advance whether or not a transaction would constitute a violation of the act.

Mr. WARREN. But you give a power to the Secretary of the Treasury to suspend the transaction in case he arrives at a conclusion that it constitutes a violation of the act.

Mr. ELLIOTT. Yes; as we give to the Secretary of Commerce the power to issue a license in any case where he concludes it would be a violation.

The CHAIRMAN. Then you do allow these two secretaries to determine the legality of the proposed transaction?

Mr. ELLIOTT. In accordance with my statement the two administrative officials are authorized to issue a license, but they are not authorized to try the case.

The CHAIRMAN. It seems to me that until you get down to section 18 you have the duties of two officials, but when you get to section 18 you give to the Secretary of the Treasury practically all power over transactions beyond the seas. I do not want to say that positively, but that is the construction I put upon it from listening to the Secretary of the Treasury. It may not mean that,

but that is the impression made on my mind, and I just want to get at what you interpret section 18 to say. Is that your understanding of it?

Mr. ELLIOTT. No, sir; if the language of that section is susceptible of that interpretation, I feel sure that the Secretary of the Treasury would feel that there should be something done to remove that doubt.

The CHAIRMAN. You say in section 18 that he is "empowered, under such regulations as he may prescribe, to examine, supervise, and control all dealings in foreign exchange, transfers of credits in any form," etc. They say that that puts in his hands the power to control it. They say that he can control it absolutely; that he can do just what he pleases with it; and it takes that power out of the hands of the Secretary of Commerce.

Mr. ELLIOTT. I will say that that is not what is intended.

The CHAIRMAN. It is the plain meaning of that language.

Mr. ELLIOTT. It is if you read it without reference to the context; but you will find that the only action that the Secretary of the Treasury can take, after his investigation, is based upon the assumption that the act has been violated. He can not declare an embargo on gold, and he can not say to any creditor in the United States, "You can not pay your debts to your English creditors." He can not control a legitimate foreign transaction. The only action he takes after his investigation is to prevent the shipment of the gold if its shipment will result in violation of law, or to prevent the consummation of a foreign exchange transaction if it will result in violation of law.

The CHAIRMAN. To "control all dealings in foreign exchange." is the language.

Mr. ELLIOTT. No, sir; but when you come to any action, on his part it can be taken only when it appears to him that the result of any transaction will be a violation of law. Mr. Warren says that gives him the power to determine that. Now, let us assume that a bank in New York has arranged to open a credit which the Secretary believes will result in a violation of the provisions of this act, and he serves notice on that person, and notwithstanding that the bank goes ahead and consummates the transaction, it is the courts that have to determine, in the final analysis, whether it is a violation or not, and not the Secretary of the Treasury. He has no power of a court, and he has no power to determine—neither he nor the Secretary of Commerce.

The CHAIRMAN. But for practical business, will not somebody have to determine quickly? It takes the courts a long time to settle these matters.

Mr. THURMAN. Mr. Chairman, under this section could not the Secretary of the Treasury determine, notwithstanding the fact that the Secretary of Commerce had previously held that the transaction was not a violation of the law—could not the Secretary of the Treasury under this provision giving him entire supervision and control, arbitrarily say—or not arbitrarily, if you please—that a transaction was in violation of the provisions of the bill, and therefore he suspended it? Can he not do that?

Mr. ELLIOTT. If you assume that the Secretary of Commerce is acting as a court, to determine whether or not——

Mr. THURMAN. Somebody has to put this bill in operation.

Mr. ELLIOTT. If you do not draw any distinction between the exercising of a power that is vested in an individual and the exercise of a power that is vested by the Constitution in the courts.

Mr. THURMAN. I do not mean to say that the transaction would give to an individual immunity, but somebody has got to decide, or you must stop the transaction and wait and submit it to a court.

Mr. ELLIOTT. Is it not a fact that if it is not determined each party engaged in the transaction must take certain chances?

Mr. THURMAN. Yes.

Mr. ELLIOTT. So that——

Mr. THURMAN. But somebody must guide the thing and put it into operation. I do not see how otherwise you are to get anywhere.

Mr. ELLIOTT. Do I understand you to mean that the power is vested in the Secretary of Commerce to determine what are and what are not violations of this act?

Mr. THURMAN. No; but I say he must decide, when a case is presented to him, whether it requires license, under the provisions of this bill, or whether it does not, and if he can not do that you can not have any transaction at all. You might just as well throw the bill away.

Mr. ELLIOTT. Does not the act itself prescribe when he shall have a license and when he shall not?

Mr. THURMAN. Every case must depend on its own state of facts. There is no arbitrary rule about that.

The CHAIRMAN. May I ask you to state in clear, simple language, so that an ordinary layman——

Senator FERNALD. Farmer.

The CHAIRMAN (continuing). Yes; so that an ordinary farmer would understand just what are the functions and duties and powers of the Secretary of Commerce and the respective functions and powers of the Secretary of the Treasury? Please state that as clearly as you can, without interruption.

Mr. ELLIOTT. Will you state it, Mr. Warren? You are the author of the bill.

The CHAIRMAN. I want your statement, Judge Elliott, as you understand it.

Mr. ELLIOTT. Under the bill?

The CHAIRMAN. Yes; under the bill. We are taking the bill as a whole, now.

Mr. ELLIOTT. I will make it as concise as I can. This act, in a general way, is to prevent trading or intercourse of any kind between citizens of the United States and alien enemies. Alien enemies are specifically defined as persons living or doing business in certain prescribed territory or countries with which this country is at war. The act specifically makes it unlawful for any person to have any dealings with anybody that comes within that classification of "alien enemy," and if any person does have dealings with an alien enemy, he is subjected to the penalty prescribed in section 15—it is made a criminal offense—and he may be tried in the courts and if convicted may be punished for the violation of the provisions of the act.

Inasmuch as it was anticipated that certain situations would necessarily arise when limited intercourse between the citizens of this

country and alien enemies would have to be permitted, the act authorized the Secretary of the Treasury to issue licenses to persons, and to have them limited to intercourse with certain other persons, and provided that when such license was issued the act was taken out of the criminal class and made a legal transaction.

Naturally, in the administration of this act a number of questions will necessarily arise that are very close to the line, as to whether or not they do constitute trading with an enemy; and in order to enable the Government to see that those cases are prosecuted it vested certain powers in the Secretary of Commerce with reference to shipments abroad and things of that kind, to enable him to prevent the shipments or bring about these prosecutions.

It appeared that one of the most natural methods that would be resorted to for evading the provisions of this act and for paying the money to a resident of a belligerent country would be to use the machinery of the banks. This provision, section 18, and the other amendments were suggested because, the Secretary of the Treasury having jurisdiction over those matters, he would be in a better position to run down and find out about these transactions that would, if completed, constitute violations of the act. With that end in view, these amendments were offered, so that there was vested in that branch of the Government which was best equipped to handle it the power to make investigation and find out whether pending transactions might or might not result in violations of this act. It was naturally assumed that in the course of those investigations it might develop that some transactions were only partially completed, and they might have gone to that point without any intention on the part of the parties concerned to violate the act. They might have been ignorant of the facts. So that, instead of providing that they should go ahead and complete the transaction and then prosecute them under section 15, the provision was put in here that if that condition arose and the Secretary found out that a transaction was pending which might result in violation of the act, he might warn the parties and say, "You had better stop and not complete this transaction." It was not intended to place in the hands of the Secretary of the Treasury the power to override or to interfere with the powers of the Secretary of Commerce in any way, shape, or form. It was intended only to give him the power to use the machinery that he has now for looking into these transactions, and to add an additional power, giving him power to call for the books, and so forth, in order to find out what this transaction was that was being engaged in. The purpose is to make the act more effective, it is to provide a machinery by which the Government can be able to watch these transactions more effectively.

The CHAIRMAN. Then I understand that you construe this bill to mean that the Secretary of Commerce is the main administrative agency for carrying out the provisions of the bill?

Mr. ELLIOTT. Absolutely.

The CHAIRMAN. And that the Secretary of the Treasury simply assists in matters relating to financial and banking matters?

Mr. ELLIOTT. That is the whole purpose. The Secretary of the Treasury, I am quite confident, has no desire to have any part of this bill which relates to the Department of Commerce part of the bill transferred to his department.

The CHAIRMAN. Would it be satisfactory to the Secretary of the Treasury if the committee should adopt amendments here which would leave the administrative functions in the hands of the Secretary of Commerce but would require the Secretary of Commerce to act through or with the approval of the Secretary of the Treasury in anything requiring an investigation of a bank, or a matter purely and solely financial?

Mr. ELLIOTT. I can only say that of course you could not say what would or would not accomplish that purpose. If the bill is so drawn as to leave the jurisdiction over banks and banking and financial matters in the Treasury Department, and to prevent any conflict on that score, I feel sure that that is all that the Secretary of the Treasury is anxious to accomplish; and these additional powers which have been the subject of discussion are not adding to his jurisdiction, but it is merely enabling him to use the machinery that he has already got, more efficiently. In other words, it is such a simple matter to evade the provisions of this act, if you use the machinery of the bank, through its process of foreign exchange, that unless the Secretary is given a large power to send for these books and make an investigation and get at the basis of the real transaction, it will be very hard for anybody to enforce the provisions of the bill.

Senator VARDAMAN. I understood you, Judge Elliott, that in the main the transactions which come under this bill are treated by this bill as being under the control of the Secretary of Commerce, but in other transactions the Secretary of the Treasury is given supreme authority—for instance, transactions pertaining to banks.

Mr. ELLIOTT. Yes.

The CHAIRMAN. Does not that create, necessarily, a dual authority?

Mr. ELLIOTT. No, sir; not at all, because the jurisdiction is over other persons. Commerce has jurisdiction over everybody except banks.

Mr. THURMAN. You mean separate?

The CHAIRMAN. But he does use the agency of the Treasury Department in helping out the authority of the Department of Commerce?

Mr. ELLIOTT. That is what it amounts to. It makes the authorities coordinate.

Senator VARDAMAN. No; the Secretary of the Treasury is not an assistant of the Secretary of Commerce.

Mr. ELLIOTT. No; he is not a bureau of the Department of Commerce.

The CHAIRMAN. But how in the world are you going to have a supreme head unless you do have one of these departments cooperate with the other?

Senator VARDAMAN. That is what we have been talking about here all afternoon.

The CHAIRMAN. I have no feeling as between these two departments. I would just as soon give all these powers to the Treasury Department.

Mr. ELLIOTT. The Treasury Department does not want them.

The CHAIRMAN. You have got to have one or the other in charge.

Mr. ELLIOTT. There is no conflict, unless you give the same authority to deal with the same individual.

The CHAIRMAN. But you can not separate the individual.

Mr. ELLIOTT. You have separated it in all other matters. You have given the Treasury Department control over financial matters, and the Department of Commerce control over commerce, and the Department of Justice control over legal matters.

The CHAIRMAN. This is an anomalous situation. It is a war situation, and things have to be handled quickly.

Mr. ELLIOTT. All that the Secretary of the Treasury is concerned about is to see that his control over the bank situation is not affected.

The CHAIRMAN. Now, would it not be possible to put some provision in here by which everything relating to banks must be done through and by and with the approval of the Secretary of the Treasury——

Mr. ELLIOTT. I think that is exactly what we have got.

The CHAIRMAN (continuing). And still recognizing that this bill is being enforced by the Department of Commerce?

Mr. ELLIOTT. I think that is what we have got.

Senator VARDAMAN. The Secretary of the Treasury is perfectly willing to do that, except in matters pertaining to banks.

The CHAIRMAN. Very well.

Senator VARDAMAN. Except in so far as the regulation of the banks is concerned, he would have no objection to that, and there would be no conflict of authority; but there are transactions going through the banks that necessarily come under the jurisdiction of the Secretary of Commerce, and at the same time under the provisions of this bill they also go, under section 18, under the jurisdiction of the Secretary of the Treasury.

Mr. THURMAN. That is it.

Senator VARDAMAN. I think wherever it can be done that the machinery already established in these departments should be used for the enforcement of this law without creating additional offices and clerks and things of that kind, and there ought not to be any pride of power or authority that would cause the slightest conflict between these two departments of the Government. They have both got so much to do that where one is vested with the authority to enforce the law, the other ought to be willing, even though it assumes an inferior action, to render that assistance necessary to the proper enforcement of the law. Mr. McAdoo said here the other day, and I was very much impressed by it, "I have got the machinery which I can use to enforce the law, which will cost not so much as it would cost if you have to provide for that in the Department of Commerce."

As a representative of the people who are paying the bills, I want all of that machinery which he has got to be used, and it is not our purpose to derogate from one and add to another, but the purpose is to write this law so that it can be executed without conflict, without friction. We are legislating now for 105,000,000 people, and we are not interested—I am not—in the question of where the authority is vested. I want to place it where it can be used to the best interests of all parties concerned.

Mr. THURMAN. That is exactly it.

Mr. ELLIOTT. I think we are all trying to accomplish the same purpose.

Senator VARDAMAN. I do not doubt it, sir. I am not criticizing you. I think it is your purpose and Mr. McAdoo's purpose. I think it is perfectly natural and human nature for the head of the Commerce Department to say "I do not want anybody encroaching on my preserves," and the Secretary of the Treasury feels the same way.

Mr. THURMAN. I do not think either one of us feels exactly that way. We are trying to get a thing straightened out; to make with you gentlemen a perfectly workable bill.

Senator VARDAMAN. That is all I desire.

Mr. THURMAN. Yes.

Mr. ELLIOTT. I simply want to emphasize one thing in passing. I think that the real concern of the Secretary of the Treasury in wanting to preserve the jurisdiction of his department, as he brought out the other day, is that all these financial transactions are so closely interrelated that if the administration of financial matter is under dual control, very much more serious consequences can come from that than from any other cause.

Senator VARDAMAN. I think you are entirely right about that.

Mr. ELLIOTT. That is what he wants to guard against.

The CHAIRMAN. Would it not be possible to have some provision that in these purely financial matters the Secretary of the Treasury should control, and that it must be the duty of the Secretary of Commerce to deal through the Secretary of the Treasury in handling purely financial matters but, after all, put the actual transaction up to the Secretary of Commerce so that the man in the case which was stated by Mr. Warren will know whom to deal with? He does not deal with the Treasury Department; he deals with the Department of Commerce. He goes to the Department of Commerce, and if it be a financial transaction, make it the duty of the Department of Commerce to get a ruling on that matter from the Secretary of the Treasury, and let the Secretary of the Treasury be supreme in that matter. Would not that be possible?

Mr. THURMAN. But are you going to do that if you have a transaction which involves the purchase of goods, and at the same time a payment of money through a bank? That may be authorized by the Secretary of Commerce, and the Secretary of the Treasury may say, "No; the payment can not go through this bank."

The CHAIRMAN. I am asking if it would not be feasible to fix such an amendment?

Mr. ELLIOTT. I will tell you what is the objection, if I catch your idea correctly. It may make the action of either Secretary purely administrative, if you put the discretion in one. We will assume that the same transaction arises, with the same facts presented to the Secretary of Commerce, and he might meet those facts viewing it from the standpoint of commerce purely, and say, "I think this shipment ought to be stopped. It ought not to be permitted to go forward." I mean in case of a shipment, in case of money. The stopping of that shipment might affect, in its ramifications, a dozen other transactions, and cause very serious embarrassment.

Senator FERNALD. Does not every commercial transaction necessarily involve some financial transaction?

Mr. WARREN. It may.

Senator FERNALD. So that every single case might be brought to these two gentlemen?

Mr. WARREN. Yes.

Senator FERNALD. It should be controled by whichever one can handle it best. And also every transaction of a financial nature may involve a comercial transaction?

Mr. ELLIOTT. This section furnishes the machinery for getting at information that you have not got now. Suppose you leave out section 18 and do not give that power to the Secretary of the Treasury at all, and leave the rest as it stands, with the provision in there that the Secretary of Commerce shall appoint such investigators, examiners, etc., as he may deem necessary for the purposes of the act; then how are you going to get this information? Are you going to send the investigators of the Secretary of Commerce into the banks to run down those foreign transactions, or——

Mr. THURMAN. No; we are going to the Treasury Department to get that.

Mr. ELLIOTT. But you do not provide for going to the Treasury Department.

Mr. THURMAN. That is a very simple matter to provide.

Mr. ELLIOTT. If you concede that, that the Secretary of the Treasury should make these investigations, and he makes an investigation and decides that if the transaction is consummated it may result in an enemy getting this money, now, according to that theory, he would then report to the Secretary of Commerce and say, "Now, what are you going to do? Here are your facts. I am acting as a bureau for you, and I have got these facts. What are you going to do?" Then the Secretary of Commerce comes in to determine what should be done in this financial transaction, which is purely financial at that time.

Mr. WARREN. It is a financial transaction. It is a payment.

Mr. THURMAN. You are stopping intercourse between all the executive departments.

Mr. ELLIOTT. At that point it has gotten to be purely a financial transaction. Now, if you are going to vest in the Secretary of Commerce authority to say what effect this act should have, I say that you have got your dual control over your financial matters. Under the amendment, on the other hand, as drawn, you confine all the administrative functions of the Secretary of the Treasury to purely financial matters. He does not have anything to do with or have any jurisdiction over the matters until they reach that point. If they do reach that point——

Senator FERNALD. But almost every transaction might be considered a financial matter.

Mr. ELLIOTT. None of us know what form these transactions are going to take.

Senator FERNALD. No.

Mr. ELLIOTT. If you are shipping some wheat to a neutral country that is ultimately destined to go to Germany or Austria, there may be no financial transaction in the banks here at all. Very frequently those transactions are handled through other countries. There would not be any question of the party here doing anything through our banks at all. The only time that the Secretary of the Treasury would step in would be when the banks of the United States, or some one under his jurisdiction, was affected. Then he would have control.

Mr. WARREN. Is not this true, that every single commercial transaction, the payment for which is to be settled here, involves a financial transaction? Is not that true?

Mr. ELLIOTT. Yes; if the payment is to be made here, of course.

Mr. WARREN. Yes; if the payment is to be made here, it involves a financial transaction; so that every commercial transaction which involves a financial transaction becomes a financial transaction within the purview of this bill?

Mr. ELLIOTT. Of course, every transaction is a financial transaction which becomes a financial transaction; that is admitted. [Laughter.]

Mr. THURMAN. And therefore the jurisdiction over it is put in the Treasury Department.

Mr. ELLIOTT. I am unable to see—on the question of the custodian of alien property, you will recognize that all financial matters are put under the jurisdiction of the Secretary of the Treasury, by providing that all the money which is turned over shall be turned over to the Secretary of the Treasury for investment.

Mr. THURMAN. I want to know where the dividing line would be in the case of a transaction which involved payment to a bank. Now, goods are delivered under the authority issued by the Secretary of Commerce. Where does the financial end of the transaction begin? Who is going to determine those things?

Mr. ELLIOTT. That question would not arise at all. If the goods had been delivered under the license of the Secretary of Commerce, that would make the act legal.

Mr. THURMAN. As it is written, I think it clearly could arise.

Mr. ELLIOTT. That is a question of construction of that section.

Senator VARDAMAN. I understand, I think, quite clearly Judge Elliott's position, and the thing he wants to accomplish I think would facilitate the public service, but the difficulty that we encounter—those of us who are trying to frame the bill—is to write it just so as to accomplish what Judge Elliott desires without doing something that we do not want to do; for instance, to bring about that conflict. Of course that has been fought over so much I can not agree with the Judge that his amendment means only what he has intended that it shall mean.

Mr. ELLIOTT. Then, I think that this amendment ought to be amended to cover that.

Senator VARDAMAN. Yes; and I think that we will be able to do that.

The CHAIRMAN. Do you suppose, gentlemen, that you could by further conference among yourselves get this into better shape? This completes the hearing, so the committee will now adjourn.

Mr. THURMAN. I would prefer to leave it with the committee.

(Whereupon at 5.20 o'clock p. m. the subcommittee adjourned subject to the call of the chairman.)

TRADING WITH THE ENEMY

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE
COMMITTEE ON COMMERCE
UNITED STATES SENATE

SIXTY-FIFTH CONGRESS
FIRST SESSION

ON

H. R. 4960

A BILL TO DEFINE, REGULATE, AND PUNISH TRADING WITH THE ENEMY, AND FOR OTHER PURPOSES

AUGUST 13, 1917

PART 2

Printed for the use of the Committee on Commerce

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TRADING WITH THE ENEMY.

MONDAY, AUGUST 13, 1917.

UNITED STATES SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON COMMERCE,
Washington, D. C.

The subcommittee met, pursuant to call, at 11 o'clock a. m., in the committee room, Capitol, Senator Joseph E. Ransdell presiding.

Present: Senators Ransdell (chairman) and Vardaman of the subcommittee; and Senator Fletcher.

Also present, Hon. William C. Redfield, Secretary of Commerce; Hon. Charles Warren, Assistant Attorney General of the United States, and Albert Lee Thurman, Esq., Solicitor of the Department of Commerce.

The committee had under consideration the bill (H. R. 4960) "to define, regulate, and punish trading with the enemy and for other purposes."

The CHAIRMAN. The committee will come to order. We will first hear the Secretary of Commerce, Mr. Redfield.

Mr. Secretary, will you please make a statement in regard to the proposed amendment to section 13 of the pending bill, which reads as follows [reading]:

All instructions issued to the collector of customs by the Secretary of Commerce under authority of this act or of the act of June 15, 1917, shall be transmitted through the Secretary of the Treasury.

I will thank you to give a full explanation of this whole matter, in your own words.

STATEMENT OF HON. WILLIAM C. REDFIELD, SECRETARY OF COMMERCE.

Secretary REDFIELD. May I begin by saying that, knowing the Postmaster General had consulted the President on this subject, I spoke to the Postmaster General last evening. He authorizes me to say to this committee that he called me on the telephone to say that the President had told him he wished the matter of clearances to remain with the Department of Commerce; and the Postmaster General asked me to convey that message to the committee this morning.

The CHAIRMAN. By "the matter of clearances" you mean——

Secretary REDFIELD. The whole matter of clearances of which this is a part.

The CHAIRMAN. And does that include the instructions to collectors of customs?

Secretary REDFIELD. Yes; concerning everything.

Let me offer two suggestions for the consideration of the committee.

The first point is that the existing law should be obeyed, and the second is that that law having been enacted as the result of long experience and careful deliberation should not be altered piecemeal without due inquiry; if altered at all, it should be after a thoughtful study of the whole situation.

On that let me then say, first, that the law is not now obeyed.

Second, that the proposed amendment is a reversal of existing law.

Third, that it substitutes confusion and delay for celerity and promptness.

Fourth, that it involves a far greater matter than appears upon the surface.

Taking up these four statements specifically, first I point out that the existing law is not now obeyed. That law is found in the organic act forming the Department of Commerce approved February 14, 1903. Section 10 of that act is as follows [reading]:

All duties, power, authority, and jurisdiction, whether supervisory, appellate, or otherwise, now imposed or conferred upon the Secretary of the Treasury by acts of Congress relating to merchant vessels or yachts, their measurement, numbers, names, registers, enrollments, licenses, commissions, records, mortgages, bills of sale, transfers, entry, clearance, movements, and tansportation of their cargoes and passengers, owners, officers, seamen, passengers, fees, inspection, equipment for the better security of life, and by acts of Congress relating to tonnage tax, boilers on steam vessels, the carrying of inflammable, explosive, or dangerous cargo on vessels, the use of petroleum or other similar substances to produce motive power and relating to the remission or refund of fines, penalties, forfeitures, exactions, or charges incurred for violating any provisions of law relating to vessels or seamen or to informer's shares of such fines, and by acts of Congress relating to the commissioner and Bureau of Navigation, shipping commissioners, their officers and employees, Steamboat-Inspection Service, and any of the officials thereof, shall be, and hereby are, transferred to and imposed and conferred upon the Secretary of Commerce from and after the time of the transfer of the Bureau of Navigation, the shipping commissioners, and the tSeamboat-Inspection Service to the Department of Commerce, and shall not thereafter be imposed upon or exercised by the Secretary of the Treasury. And all acts or parts of acts inconsistent with this act are, so far as inconsistent, hereby repealed.

It will be noticed on examining this section that it is of a twofold character:

1. It transfers to and imposes and confers upon the Secretary of Commerce the duties detailed in the section.

2. It provides expressly that these duties shall not thereafter be imposed upon or exercised by the Secretary of the Treasury.

It will be noted also that this act not only refers to clearances but to a very wide variety of duties, which are transferred to the Department of Commerce and prohibited to be exercised thereafter by the Secretary of the Treasury. Among these duties is that concerning clearances, but the matter of clearances is but one out of many such duties, among which others are those of caring for "registers, enrollments, licenses, commissions, records, mortgages, bills of sale, transfers, entry (clearance), movements and transportation of their cargoes and passengers, owners, officers, seamen," etc.; duties concerning fees, inspection, equipment, and many others.

Under this law, since its enactment, the Bureau of Navigation of the Department of Commerce has administered those duties, and now administers them all save on the one subject of clearances. The act has been during this period of 14 years repeatedly reviewed by the Attorney General, whose numerous opinions upon the subject are all

of one substantial tenor, namely, that the duties are imposed by the act upon the Secretary of Commerce, and are prohibited to be performed by the Secretary of the Treasury. They are exclusively to be performed by the Secretary of Commerce.

The act has worked well, without friction, is to-day working well, without friction. By reason of it the Bureau of Navigation is in daily—indeed, hourly—communication with collectors of customs all over the country. It gives them instructions, it makes rulings, and is in every respect the source of authority on the matters covered by the act with the sole exception, temporarily, of the matter of clearances.

By an Executive order, No. 2017, dated August 8, 1914, the matter of clearances was, among others, put temporarily in the hands of the Department of the Treasury. The Executive order reads [reading]:

In order to secure a more prompt and effective enforcement of the neutrality laws, to meet the emergent conditions now existing, it is hereby ordered that all instructions to customs officers concerning the enforcement of the neutrality laws of the United States shall, until otherwise directed, be issued by the Treasury Department.

Under that authority the Department of the Treasury has issued instructions concerning clearances, and still does so. Nevertheless, collectors of customs, being habituated to dealing through the Commerce Department, have from that day repeatedly asked instructions from the Bureau of Navigation of the Commerce Department, which has been given them.

The reason for this Executive order may be termed a physical one. It was a measure to protect the neutrality of the country, and the physical reason was that the Treasury Department at the time that order was issued had available the vessels of the Coast Guard, the the revenue cutters, stationed at our principal ports, and able readily to deal with matters of neutrality.

During the pendency of this Executive order it was pointed out to me by the solicitor of the department that the acts of the Treasury Department in granting clearances thereunder were in contravention of the act of February 14, 1903, section 10, and that there did not exist, in the Executive, the authority to replace by an Executive order the direct prohibition of Congress enacted in the act of February 14, 1903. That has been conveyed to the President in writing, and also to the Secretary of the Treasury.

When this country declared war against Germany the necessity for the Executive order, which was based upon our neutrality, ceased, in large measure if not wholly, to exist.

Furthermore, as we entered the war the vessels of the Coast Guard were withdrawn from the Treasury Department and placed under the jurisdiction of the Navy Department, where they now are.

I thereupon requested of the Secretary of the Treasury that the power temporarily exercised by the Treasury Department over clearances should be restored to the Department of Commerce. He has agreed to this. On August 1, 1917, he wrote me, saying [reading]:

I am quite willing that any powers the Treasury Department is now exercising in the matter of clearances shall be immediately restored to the Department of Commerce.

On August 9 he wrote me again, saying [reading]:

With respect to the modification or rescission of the Executive order of August 8, 1914, respecting clearances, before the receipt of your letter I again

stated to the President my willingness to have this order rescinded and the jurisdiction of the Department of Commerce over clearances fully restored.

And again in the same letter he said [reading]:

If you think the present arrangement is hurtful or prejudicial to the public interest or to the interests of your department, I will again advise the President that I do not object to the abrogation of the Executive order of August 8, 1914.

Before leaving this phase of the matter let me say that I have received, through the courtesy of the Secretary of the Treasury, a copy of his portion of his testimony before this committee. In that, referring to the organic act creating the Department of Commerce of February 14, 1903, section 10, he states [reading]:

The act was carelessly drawn in this respect. It is a very unfortunate thing.

And further [reading]:

The position of the Department of Commerce with respect to the method of issuing instructions to my employees—to the employees of the Treasury Department—is absolutely technical. It stands upon a technical right and not upon any basis of good order, practice, or procedure. It is merely technical. That position was sustained by a decision of the Attorney General made some years ago upon purely technical grounds.

The act will speak for itself, and the records of Congress, as to its being carelessly drawn.

As to the technicality, it is that of an express prohibition of Congress.

As to a decision of the Attorney General, there are many, not one. I have placed in the hands of the chairman of the committee quotations from five or more, and others are available.

2. The proposed amendment is a reversal of the present law as regards one item only of that law, and not as regards the whole practice of the Government respecting that one item. It would require action on the part of the Department of Commerce, through the Department of the Treasury, on clearances, but not upon all clearances; only on clearances under the present law, and under the bill called the espionage act under which export licenses are now being issued by the Department of Commerce. I point out that the export licenses are being issued in large numbers, daily, without friction or difficulty, and that the effect of the proposed amendment would be to introduce a new element into this procedure now perfected and working, concerning which there has been no complaint of any kind.

Furthermore, the amendment as it stands would leave unaffected the law as regards clearances except as regards these two laws. The Department of Commerce would operate under all other acts. Thus would be produced a situation under which some clearances would be under the law controlled by the Department of Commerce and other clearances would be under the law controlled by the Department of Commerce through the Department of the Treasury.

Senator FLETCHER. I will ask you if the Treasury Department would not have the power of reversing or of overruling your orders in any of those respects? They would simply have the duty of transmitting your orders to the collectors, would they not?

Mr. THURMAN. That is correct.

Secretary REDFIELD. I was coming to that.

Senator FLETCHER. Very well.

Secretary REDFIELD. In the third place, it would appear that the effect of the amendment would be only that the Department of the Treasury would act as a transmitting medium, without authority to alter or to withhold the orders of the Department of Commerce transmitted through it. If this is the case, the effect is simply to introduce, on a matter in which promptness is essential, a delay which could only be hurtful. Many of these orders to the collectors of customs have to be given by telegraph or by telephone. Probably two-thirds of all are given in one or the other of those ways. The questions are often—I think I may say usually—matters of hours. If a telegram must be transmitted to the Department of the Treasury to be forwarded by them, the time necessary for it to reach the proper officer of the Treasury Department and for him to transmit same would frequently mean the delay of a vessel at the cost of a great deal of money, for demurrage runs up often into hundreds of dollars a day.

Furthermore, at this time it has been impressed upon me and by me upon all my associates that the one thing that ought not to be permitted is to delay ships for any avoidable cause. It is not too much to say of the mere matter of transmitting these orders through the Treasury Department that a delay of from 5 to 10 hours would commonly occur. That is the experience of the department in transmitting letters and communications to and through other departments.

On the other hand, this procedure involving this certain delay would only take effect, as I have said, on clearances under certain laws, and would not be required on clearances under other laws. Therefore, in every case a special determination would have to be made as to whether it was a case under these two laws or under other ones, and an element of confusion would be immediately introduced. Every collector of customs would have to know whether the authority he sought was under one law or the other. All instructions on the various items covered by section 10 of the act of February 14, 1903, with this single exception, would go direct as now they do; but for some reason which has not been suggested to me in any way, it seems to be desired that a portion of the clearances, and a portion only, should be transmitted through a department from which, after careful study and an experience running from the beginning of the history of the Government, they were taken 14 years ago, with the express prohibition that they could not thereafter be exercised by that department.

There are frequent cases, on the other hand, where it is essential to get instructions instantly to a port whence a vessel purposes to sail, where the matter of an hour may be vital; where a vessel may actually be on the point of departure; where the delay requisite to transmit the valid order of one department through another and coordinate department would act in every case of this kind as an estoppel of the existing method, and would mean that the vessel would escape. A case of this kind occurred yesterday. The Department of Justice called up and asked to have a vessel stopped, and we wired directly.

It seems to me that this further point requires thoughtful care. The whole of the situation involved in the amendment does not at first sight appear. There is a much larger viewpoint. Let it be

recalled that by the act of February 14, 1903, the entire service then existing in the Treasury Department, the Bureau of Navigation, was bodily taken from the Treasury Department and made an integral part of the Department of Commerce, where it now is under the same chief who was at its head in the Treasury Department. All of the records of that service, all of its rulings from the beginning of the Government, were thus transferred to the Department of Commerce.

If the principle is to be established that the collectors of customs are, and are solely, employees of the Treasury Department, so that for that reason orders respecting a certain portion of clearances must be given, with the incidental delay, through the Treasury Department, then it must follow that all orders to collectors of customs should be subject to the same principle. If sound in one particular it is sound in others. This means nothing less than that all the powers transferred to the Department of Commerce by section 10 of the act of February 14, 1903, which is the act creating the Department of Commerce, should upon this principle be exercised through the Department of the Treasury. These acts are numerous, daily, and would involve sending to the Treasury Department for transmission every act respecting all the items covered by section 10 of the organic act referred to. If this were to be the case, I should myself have to advocate, as a matter of administrative practice, that in order to save the incidental expense and delay so incurred, the Bureau of Navigation itself should be bodily transferred back into the Treasury Department; otherwise it would be unworkable. It is impossible to conceive a great service reaching out all over the country which is thus expected to transmit through another department all the orders it gives; for substantially all the instructions and orders given by the Bureau of Navigation are to the collectors of customs.

The relation, furthermore, between the Bureau of Navigation and the Steamboat-Inspection Service of the Department of Commerce is so intimate and close a matter that every hour of the day, and sometimes often each hour, there is communication between them. Those two services were by the act of Congress mentioned transferred together from the Treasury to the Department of Commerce. It is inconceivable that they could act separately. If, therefore, the principle is to be adopted as a matter of law that the collectors of customs must receive their instructions through the Treasury Department, it follows not only that the Bureau of Navigation must be restored to the Department of the Treasury, but that the Steamboat-Inspection Service should also go with it. I should myself be obliged to recommend that act if the principle were thus established.

I point out, however, that this very radical principle, thus by the amendment inserted in part in the bill, has no justification whatever in existing practice. The act of February 14, 1903, works with entire smoothness, without any friction, and no complaint of any kind or nature respecting it reached me from any officer of the Treasury Department until the time when, after we had entered the war and the Executive order of August 8, 1914, became unnecessary on that account, it was sought to restore to the Department of Commerce the powers given to it by law but temporarily exercised by the Department of the Treasury. Then, and then for the first time to my

knowledge, appeared the statement that good administration required that the collectors of customs should receive all their orders emanating from the Department of Commerce through the Treasury Department. No complaint has ever come from a collector.

Finally, it should be borne in mind that the relation between the collectors of customs and the Bureau of Navigation of the Department of Commerce are intimate, kindly, close, daily, and helpful. For all purposes of navigation, excepting only such as are concerned with the revenues, the law has placed the collectors of customs under the charge of the Department of Commerce. They have received, and do now receive—with the stated exception of clearances—their orders from that department. They act under it; and it is not in any strict sense correct to say that they are solely officers under the Department of the Treasury. I am sure the committee understand fully that the Department of Commerce is ready to accept in the most cordial spirit and with the fullest desire to cooperate with every other department, any changes in the law which it may in their judgment be wise to adopt. We feel, however, that we are justified in asking the committee to consider, as they have kindly done, the wisdom of making a change in a portion of the law as regards one item out of many. We feel that we may ask them, in courtesy, to consider the facts respecting the administration of the law, whether it has worked ill or well; whether it has worked with friction or harmoniously. If it is found that in any respect whatever there has been undue delay, friction, inefficiency, or any other cause which upon examination shall show a need of change, we shall be more than thankful to have any change made that will produce a better result.

Senator FLETCHER. With reference to the bill, the idea of both departments is to keep, as far as possible, the different provisions with respect to each of the departments distinct and separate, and as the Treasury pertains to finance and the Department of Commerce to commerce, there should be, I take it, a separation of the administrative features so far as possible so as to perform them.

This section, where it is proposed to insert the provision that the orders emanating from the Department of Commerce, instructions issued to the collectors of customs by the Secretary of Commerce, under the authority of this act or the act of June, 1897, shall be transmitted through the Secretary of the Treasury, is supposed to come in at the close of section 13.

Secretary REDFIELD. It relates to that section only.

Senator FLETCHER. It practically relates to that section only?

Secretary REDFIELD. And that section relates to clearances.

Senator FLETCHER. And that section relates to clearances; and the clearances that the Treasury Department seems to be concerned about are the clearances where an amount of gold or silver coin or bullion of the United States is concerned.

Secretary REDFIELD. No; there is no question on our part about the clearances of gold and silver coin or bullion. They refer to clearances particularly——

Mr. WARREN. Clearances under this act or under the espionage act.

Senator FLETCHER. What I wanted to call your attention to was whether ships carrying gold or silver coin or bullion or other money being considered, that might alter in any degree your opinion that

these clearances should not be transmitted through the Treasury Department? In other words, the Treasury Department seems, as I take it, to have in mind that they want to keep track of these ships having shipments of gold or silver coin or bullion.

Mr. THURMAN. By another amendment offered by the Secretary of the Treasury he provides that licenses to export gold and silver coin or bullion shall be issued by the Secretary of the Treasury. That is a different section, and there is another amendment suggested which is not objectionable.

Mr. WARREN. That is, the collectors report to the Secretary of the Treasury.

Mr. THURMAN. We have no objection to that.

Senator FLETCHER. They are only required to report so that they shall have a record of it after the ship goes. The question is whether the Secretary of the Treasury ought not to be advised about all shipments of these cargoes of gold and silver coin or bullion.

Mr. THURMAN. Yes; but under this amendment which they have asked for, and which is perfectly satisfactory to the Department of Commerce, the license for the export of gold or silver coin or bullion is to be issued by the Secretary of the Treasury, and the gold or silver coin or bullion can not be shipped without the license. Now, if an application is made to the Secretary of Commerce for a license for the export of gold or silver coin or bullion he will immediately forward that to the Secretary of the Treasury for whatever action he may see fit to take with regard to the issuing of the license.

Secretary REDFIELD. We are perfectly willing to do that.

Mr. THURMAN. There can not be any conflict there.

Senator FLETCHER. I do not understand there can be any conflict there, but the question will be as to the action permitting the taking on of the cargo, whether the Secretary of the Treasury ought not to be advised of the clearing of that cargo.

Mr. THURMAN. They go through with that transaction entirely, just as we do with any other commodity.

Senator FLETCHER. The issue of the license would not be the same as a clearance, would it?

Secretary REDFIELD. It is more; it is the right to put the gold or silver coin or bullion upon the ship at all. It could not be put there without permission of the Secretary of the Treasury.

Senator FLETCHER. In other words, there would not be a permission permitting the putting of that cargo on board unless you were willing to have the cargo cleared?

Secretary REDFIELD. There would not be an issuance of a license unless the Secretary of the Treasury is willing to have it go.

Senator FLETCHER. The question in my mind was whether, even then he might issue a license permitting the embarking of gold or silver coin or bullion.

Secretary REDFIELD. I am perfectly willing to say that before the issuance of any license permitting the carrying of gold or silver coin or bullion, the Secretary of the Treasury ought to O. K. it. I think he ought to do that.

The CHAIRMAN. I wanted to ask you to tell us how this question of the clearance is being actually worked under the Executive order of August 8, 1914.

Secretary REDFIELD. It is being worked by the Treasury Department, who are now exercising all authority over all clearances, although they have been informed that it is contrary to law and the Secretary has signified in writing his willingness to give it up. This Executive order is as follows [reading]:

In order to secure a more prompt and effective enforcement of the neutrality laws, to meet the emergent condition now existing, it is hereby ordered that all instructions to customs officers concerning the enforcement of the neutrality laws of the United States shall, until otherwise directed, be issued by the Treasury Department.

WOODROW WILSON.

AUGUST 8, 1914.

Senator FLETCHER. Is that still in force?

The CHAIRMAN. Yes. Under that Executive order the Treasury Department is issuing all orders in regard to clearances?

Secretary REDFIELD. Yes. Sometimes a collector of customs comes to us from old habit and association, and in that case we tell him what to do.

The CHAIRMAN. Do you find all this friction and delay that you were speaking of in connection with the enforcement of this Executive order?

Secretary REDFIELD. Inasmuch as they issue the orders for clearances, there is no delay. They have been taken away from us. They issue them direct.

Mr. WARREN. You say that order is in force now?

Secretary REDFIELD. It is in force now.

Mr. WARREN. I thought it referred to neutrality.

Mr. THURMAN. It did; but they are operating under it. I think it has fallen of its own weight, but they are still operating under it.

The CHAIRMAN. They are still operating under it?

Secretary REDFIELD. Yes.

Senator FLETCHER. Under this act approved June 15, 1917—the espionage act—the powers of these collectors are extremely broad. They determine certain questions. Section 3 of Title VII, on page 10, reads as follows [reading]:

Whenever there is reasonable cause to believe that any vessel, domestic or foreign, is about to carry out of the United States any article or articles in violation of the provisions of this title, the collector of customs for the district in which such vessel is located is hereby authorized and empowered,

And so forth.

This is the only reference to the Secretary of Commerce [reading]:

Subject to review by the Secretary of Commerce to refuse clearance to any such vessel,

And so forth.

Mr. WARREN. But the Secretary of Commerce, not merely in that bill but in other bills, has power to direct any collector of customs not to issue clearances. That was merely applying this to these particular cases. The collectors of customs had power to refuse to issue clearances, and they were also compelled to refuse to issue clearances at the direction of the Secretary of Commerce.

Senator FLETCHER. How do you construe that language "subject to review by the Secretary of Commerce"? It appears in other places in this bill, also. In other words, do they settle the question primarily, and only in case the shipowner objects to the decision and appeals to the Secretary of Commerce do those cases reach him? Do they reach the Secretary of Commerce anyhow?

Secretary REDFIELD. No.

Senator FLETCHER. Do they reach him in all instances, or is a decision of a collector of customs final until there is an appeal from his decision?

Mr. WARREN. I can explain that. I happen to know how those words "subject to review by the Secretary of Commerce" got in there.

Senator FLETCHER. Very well.

Mr. WARREN. When I drafted those provisions of the espionage act I followed the language of the various acts which had theretofore been in existence authorizing the colelctors of customs to refuse all clearances. When I went before the Judiciary Committee of the Senate, I think it was Senator Cummins who objected to the broad powers given to the collectors of customs on the ground that they might be abused, and I said to the Committee on the Judiciary that that was, of course, true, that any particular powers might be abused, but that these were not new powers; that the collectors of customs already had similar powers. But Senator Cummins was very anxious that there should be some kind of appeal from the collectors of customs. Now, I knew that as a matter of fact in these other cases where the collectors of customs were empowered to withhold clearances, the actual working of that was that generally they did not do so until they got their instructions from the Secretary of Commerce.

I therefore said that I did not think it made any difference whether or not you inserted those words "subject to review by the Secretary of Commerce." I said, "It does not do any harm to put those words in, although they are not in the present statutes in which the collectors of customs have these broad powers which you object to"; and on that statement the committee inserted these words, "subject to review by the Secretary of Commerce." But I saw no objection to them, nor do I see any use in them. I happen to be absolutely familiar with the reason for that provision.

Senator FLETCHER. Whether or not in actual practice they merely give the right of appeal and in a great majority of cases settlement is had right there with the collector of customs or not, is the question in my mind.

Mr. WARREN. Yes.

Senator FLETCHER. If this simply means that the collectors of customs determine this question as to issuing or refusing clearances primarily, and only in cases of dissatisfaction with the decision of the collector of customs does the matter go to the Secretary of Commerce at all, then I should say that in perhaps four-fifths of the cases they do not get beyond the collector of customs.

Mr. THURMAN. Practically the same authority is given to the collector of customs in section 13 of the seamen's act. They are instructed there to refuse clearance under certain conditions. As a

matter of fact and of practice, it is worked in this way: Whenever there has been a question whether a vessel should be cleared or not, I do not think there would be one case in fifty where the collector would decide the matter himself. He wires back and asks instructions. That is the practical working of that matter.

Mr. WARREN. Before the question was even presented to the collector for clearance, or before he had acted, he would request of the Department of Commerce or Labor or some other department to instruct the collector not to issue the clearance, or to issue it under the power given by the organic act, which vests in the Secretary of Commerce all power over the question of clearances; that is, which puts the collector of customs, in so far as they issue or refuse clearances, under the direction of the Secretary of Commerce.

Senator FLETCHER. What would be the objection to having the Department of Commerce issue general instructions which are to control the collectors, and wherever those instructions pertain to any matter contained in this bill or in the espionage bill have them passed upon by the Treasury Department?

Secretary REDFIELD. That relates to every ship that leaves every port in the United States, because every ship carries goods which are under license for export. The only reason for that is to give the Treasury Department control over clearances, which the law expressly prohibits them from having now, and which was taken from them 14 years ago as the result of a hundred years of experience. Every ship that leaves to-day can only get clearance by reason of her having a license for such prohibited goods as she may carry. Those licenses are in duplicate, and before the goods can be loaded at all they must have the license on the dock, and before the collector can give clearance he must have a license for export. That is all protected very clearly.

Now, why must we go through the purely perfunctory routine of giving clearance through the Treasury Department? Why must they have a review of it, whereas the law has placed it elsewhere, and that law has been administered for years without friction? The point I want you to get is this: That there is the coming up of an old fight which Congress fought out 14 years ago and settled in a way which has worked with perfect success. The mere accidental fact that they had certain powers to prevent the physical exit of ships made it possible under this Executive order for it to go through their hands. The need for that has passed away, and our contention is that the law should be obeyed as it stands. It has worked perfectly, and it should be obeyed. They come in now and say, "No; the law should be changed." They do not deny that it worked well, but they say it should be modified. They come in without any discussion of the larger subject and propose in substance the establishment of a principle here which, if it is started, means nothing less than that the whole services must go back. It may be that that is a right thing to do; but if it is it should be done, I think, after very careful investigation of the whole subject.

Senator FLETCHER. There is in my mind the thought that with the broad powers given under these acts to the collectors of customs, the collectors of customs having been appointed on the recommendation

of the Treasury Department, they must have already very considerable indirect authority in these matters.

Secretary REDFIELD. The Treasury or the collectors?

Senator FLETCHER. The collectors.

Mr. THURMAN. They are appointed on the recommendation of the Treasury Department, but, in so far as the matters refer to the Department of Commerce, they are officers of the Department of Commerce, and they have for 14 years looked to the Department of Commerce for instructions and orders regarding those matters.

Senator FLETCHER. Yes; but all nominations of the collectors of customs are sent in by the Treasury Department, so that they are primarily selected by the Treasury Department. Now, take section 5, page 6, of the act. That reads as follows [reading]:

> Whenever it appears that the vessel is not entitled to clearance or whenever there is reasonable cause to believe that the additional statements under oath required in the foregoing section are false, the collector of customs for the district in which the vessel is located may, subject to review by the Secretary of Commerce, refuse clearance to any vessel, domestic or foreign, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, forbid the departure of the vessel from the port or from the jurisdiction of the United States, and it shall thereupon be unlawful for the vessel to depart.

In the actual operation of that it would seem that these collectors have very extensive and very broad powers there; that they could primarily settle that question, and if there is any dissatisfaction by the vessel owners they can have it brought to the Secretary of Commerce.

Mr. THURMAN. We can only say that since that act went into effect it has been administered through the Department of Commerce, instructions have been to the collectors by the Department of Commerce; that there has been not one particle of friction in the administration of the bill, and we have gotten along without the Department of the Treasury. Therefore why can we not continue to do so?

Senator FLETCHER. Under this provision that these matters shall be subject to the review of the Department of Commerce, you would not necessarily review every clearance?

Secretary REDFIELD. Certainly not.

The CHAIRMAN. Under the general law you already review?

Secretary REDFIELD. Yes. If that was not there at all we should still have general control of the clearances.

The CHAIRMAN. Under the act which created your department you were given jurisdiction over clearances—everything relating to clearances?

Secretary REDFIELD. Yes.

Senator FLETCHER. The idea of the subcommittee evidently was to keep it under the Department of Commerce. That was the theory of the committee—that it should be under the Department of Commerce. It gives mighty broad powers to collectors.

Mr. WARREN. Senator, the point of that is that it gives no broader powers to the collectors than they already possess under the Revised Statutes and other statutes. That is simply copied from the language in existing statutes. If that language, "subject to the review of the Secretary of Commerce," had not been inserted in this bill the

collectors of customs in refusing to issue or in issuing clearances would have been under the direct control of the Secretary of Commerce, not only relative to clearances under the espionage act but under all the previous acts, as the result of the organic act creating the Department of Commerce.

Senator FLETCHER. Yes; and I presume the Secretary of Commerce requires a report on every clearance?

Secretary REDFIELD. A record of every one; and licenses have now to be issued for them all.

The CHAIRMAN. The ordinary meaning of those words, as I construe them, would be that if we adopt them we would make of the Treasury Department a mere clerical transmitting agency.

Secretary REDFIELD. That is all.

The CHAIRMAN. With all the discretion left in the Department of Commerce. Am I correct in that?

Secretary REDFIELD. So I understand.

The CHAIRMAN. That the Treasury Department would have no other power under this except to transmit all orders issued by you?

Mr. THURMAN. I am very much afraid that if you leave it in that way they will say then that they have some powers.

Senator FLETCHER. The principal effect you apprehend is delay?

Secretary REDFIELD. Delay.

Senator FLETCHER. And confusion, your collectors in one case acting under one law and in another case under this law?

Secretary REDFIELD. Yes; and it is the entering wedge.

Mr. THURMAN. I can not see why the Treasury Department wants to be a messenger of the Department of Commerce in transmitting these orders.

Secretary REDFIELD. I do not know whether they would approve an addition to that amendment, stating, "but the Secretary of the Treasury shall exercise no authority or jurisdiction of any nature over such clearances, and its sole duty shall be to transmit them."

The CHAIRMAN. As I understand your testimony, as a practical proposition you insist that if this amendment is adopted it will cause very great delay in the practical operation of the movement of vessels from the ports of this country.

Secretary REDFIELD. Yes.

The CHAIRMAN. And in some instances will completely prevent what is desired, because of that bill.

Secretary REDFIELD. It will.

The CHAIRMAN. You know of no good result that will come from it?

Secretary REDFIELD. I know of no good result to be accomplished by it.

The CHAIRMAN. You contend that it will make a conflict between your department and the Treasury Department in matters which were confided solely to your department by the act creating your department—by the act of 1903?

Secretary REDFIELD. I do.

The CHAIRMAN. You are very much opposed, I take it, to the passage of this amendment?

Secretary REDFIELD. I am totally opposed to it. I do not regard it as a measure that would work in practice at all.

The CHAIRMAN. Have you anything else you want to say?

Secretary REDFIELD. No, sir. I have here an opinion of my solicitor reviewing this question.

The CHAIRMAN. You spoke of some opinions a while ago, and I presumed you were speaking of some opinions of the Attorney General.

Secretary REDFIELD. This was an opinion of the solicitor of the department; but the matter has been fully covered, and I do not see any necessity of adding to it unless the committee desires.

The CHAIRMAN. We are very much obliged to you, Mr. Secretary.

Secretary REDFIELD. I am sorry to have taken so much of your time, Mr. Chairman.

The CHAIRMAN. The subcommittee will now stand adjourned.

(Thereupon at 11.40 o'clock a. m. the subcommittee adjourned, subject to the call of the chairman.)

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